

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT
STATE OF FLORIDA

JOHN HAMER and HEATHER
HAMER,

Appellants,

vs.

DCA Case No. 1D2023-2814
L.T. No. 19-3051-CA

INSURANCE LITIGATION GROUP,
P.A.,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
BAY COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

This is an appeal taken from a final judgment of the Fourteenth Judicial Circuit in Bay County, Florida, the Hon. Elijah Smiley, presiding. The Plaintiffs/Appellants JOHN HAMER and HEATHER HAMER are referred to herein as “Appellants” or “The HAMERS”. The Appellee INSURANCE LITIGATION GROUP, P.A., is referred to as “Appellee” or “ILG”.

References to the record on appeal are to the exhibit in the Appendix accompanying this brief (and to the page number in the exhibit), for example, App. Ex. **. Unless otherwise specified, no emphasis was supplied by the author of this brief to quotations from the record or case law.

STATEMENT OF THE CASE AND OF THE FACTS

This case was initiated by the filing on August 12, 2019, of a complaint by the HAMERS against their insurer, FedNat Insurance Company, for hurricane damage. Complaint, App. Ex. A. The complaint showed initial counsel for the HAMERS to have been Appellee INSURANCE LITIGATION GROUP, P.A.

ILG's Motion To Withdraw as the HAMERs' counsel of record was filed June 30, 2020. App. Ex. B. It is noteworthy for the following representation made to the trial court:

1. Irreconcilable differences have arisen between Christopher Aguirre, Esq., and the Insurance Litigation Group, P.A., and the Plaintiffs, Heather Hamer and John Hamer ("Plaintiffs").

2. Due to the irreconcilable differences that have arisen between the undersigned and their clients, the undersigned [ILG] are unable to effectively and properly continue representing the Plaintiffs in this lawsuit.

App. Ex. B, page 1. William B. Price was substituted as counsel for the HAMERS (App. Ex. C) by order rendered August 3, 2020. App. Ex. D.

On August 25, 2020, Appellee ILG filed its notice of charging lien. App. Ex. E. In its notice, ILG relied explicitly on its May 8, 2019, "Retainer Agreement". Appellee ILG asserted that it undertook the representation "in

accordance with the Retainer Agreement”, until June 30, 2020. Notice of Charging Lien, paragraph 5, App. Ex. E. Appellee ILG further alleged – contrary to the statement made by ILG in its Motion To Withdraw – that “Plaintiffs”, the HAMERS, “terminated the Retainer Agreement”. Notice of Charging Lien, paragraph 6, App. Ex. E. The Contingent Fee Retainer Agreement relied on by ILG was not attached to the Notice of Charging Lien filed with the Court on August 25, 2020.

The HAMERS objected to ILG’s charging lien and moved to strike the Notice by their filing of January 13, 2021. App. Ex. F. Attached was an email dated June 30, 2020, purporting to be from attorney Christopher A. Aguirre, on behalf of ILG, to the HAMERS, which recited:

We will be unable to continue representing you in this matter. ***We have done our best to this date to resolve your case in a fashion you would find acceptable. It is clear and unfortunate that there is a feeling on your end that we do not represent your best interests.*** You’ve indicated these perceptions and have voiced them to our staff and attorneys. This ongoing misconception has led us to conclude that the best course of action for all parties would be a mutual separation by way of a Motion to Withdraw as Counsel. We will be filing our Motion To Withdraw shortly and will provide you with a copy.

App. Ex. F (emphasis supplied). As noted above, the “June 30” date was also cited by ILG in its Notice of Charging Lien as the end of its

representation of the HAMERS. The HAMERs' opposition to the charging lien was based on ILG's own voluntary withdrawal from representation, citing *Faro v. Romani*.

On February 10, 2021, the HAMERs served a supplemental objection to the ILG charging lien. App. Ex. G. There, the HAMERS noted that “. . . [the HAMERS] did not initiate nor did they request that Insurance Litigation Group withdraw as their counsel”. Objection of February 10, 2021, paragraph 3, App. Ex. G. The HAMERS again noted *Faro*, contending that no charging lien is appropriate when an attorney representing a client under a contingent fee agreement withdraws in the absence of the client's wrongdoing. Objection of February 10, 2021, paragraph 6, App. Ex. G.

On December 30, 2021, unaccompanied by any motion, ILG filed copies of two separate agreements, the first entitled a “Pre-Litigation Service Agreement” dated May 6, 2019 (accompanied by a Statement of Client's Rights dated May 6, 2019), and the second an “Attorney's Contingent Fee Retainer Agreement” dated two days later, May 8, 2019. App. Ex. H. As noted above, it was the *May 8* agreement, not the *May 6* agreement, upon which ILG predicated its earlier Notice of Charging Lien.

The “pre-litigation” agreement first anticipated the providing of services and the payment of “pre litigation fees prior to a lawsuit being filed”.

In the event that [ILG] files and processes your claim directly with the Insurance Company, without filing a lawsuit **and the Insurance Company issues a claim payment to policyholder**, then [ILG] is entitled to recover 10% of that claim payment as a pre-litigation/consulting fee for the work performed by [ILG]’s loss consultant and other personnel.

However, the “pre-litigation” agreement also provided for “pre litigation fees *after* a lawsuit is filed”:

In the event that [ILG] files a law suit against Client’s insurance company, then in addition to the Litigation Attorney’s Fees and Costs paid to [ILG] as set forth in paragraph 1 of the ATTORNEY’S CONTINGENT FEE RETAINER AGREEMENT, Client acknowledges, consents and agrees to also pay 10% of the Client proceeds **recovered in litigation** to [ILG] for all the **PRE LITIGATION/ADJUSTING** work performed prior to filing litigation.

(italics emphasis supplied). The Pre-Litigation Service Agreement also contained a reference to the Contingent Fee Retainer Agreement, incorporating it by reference in full into the Pre-Litigation Agreement (with the exception of the 33% attorney fee section), as follows:

I/we acknowledge that all the terms and conditions (other than the section on Attorney’s Fees) as set forth in the **ATTORNEY’S CONTINGENT FEE RETAINER AGREEMENT** signed by Client are fully incorporated herein.

Notice of Filing, Exhibit A, at App. Ex. H.

Attached to ILG's Notice of Filing was a copy of the May 8 "Retainer Agreement", upon which ILG initially based its charging lien. See Notice of Filing, App. Ex. H, Exhibit B. The May 8 "Retainer Agreement" provided for a 33% fee based on "the client proceeds" contingent upon recovery. However, pertinent to this appeal, the Retainer Agreement also contained, in a separate section, the following language:

Client recognizes the right of Attorney to withdraw from the case in its sole discretion, whenever it is of the opinion, based on the specific circumstances surrounding Clients case, that the chances for success do not justify Attorneys time and expense in going forward. In that event, ***upon notification to Client of cancelling this agreement, Attorney shall have no further duty to Client and Client shall not be obligated to pay any fees to Attorney for any/all work performed during that time.***

Retainer Agreement, Notice of Filing, App. Ex. H, Exhibit B (emphasis supplied). This language, set forth at the end of the Contingent Fee Retainer Agreement, was thus incorporated by reference into the Pre-Litigation Service Agreement.

There is no dispute, in this record, that ILG did not settle the HAMERs' claim prior to suit and that ILG then filed suit. There is also no dispute that ILG withdrew (under motion filed with the trial court on June

30, 2020) from the representation, under the terms of its email of June 30, 2020, prior to the HAMERS' settlement with FedNat or their recovery of any insurance proceeds for which suit was filed.

In response to the charging lien, the HAMERS served an affidavit (by Ms. Hamer) attesting to email communications between Ms. Hamer and ILG for the week immediately prior to ILG's "cancellation" email of June 30, 2020. App. Ex. I. Those communications, which were generally related to the scheduling (and re-scheduling) of an inspection of the HAMERS' property, could fairly be characterized as adversarial. For example, in Ms. Hamer's final email of June 30, 2020, at 10:04 AM CT, Ms. Hammer indicated that ". . . [r]efusing to take our phone call or call us back is also being documented." See the Affidavit, document page 4, at App. Ex. I. That was almost immediately responded to by attorney Aguirre's email of June 30, 2020, at 10:42 AM CT, indicating that "[ILG] will be unable to continue representing you" and "the best course of action for all parties would be mutual separation by way of a Motion to Withdraw as Counsel". See the Affidavit, Exhibit 2, at App. Ex. I, page 17.

The HAMERS moved for summary judgment on the charging lien on March 10, 2022. App. Ex. J. The HAMERS contended that they "did not

initiate nor did they request” ILG’s withdrawal. Motion, App. Ex. J., page 2, paragraph 5. The HAMERS’ principal argument was that, in the context of a contingency attorney fee agreement, where the attorney voluntarily withdraws and the “contingency” of recovery has not occurred, the attorney is not entitled to compensation (citing *Faro*). Motion, App. Ex. J, page 3.

In response to the trial court’s directive, the HAMERS supplemented their motion with exhibits and their Statement of Facts, both filed April 11, 2022. App. Ex. K and L. The HAMERS reiterated their assertion that they “did not initiate, nor did they request ILG to withdraw”. App. Ex. L, page 2, paragraph 5. The HAMERS also alluded to an evidentiary hearing held on December 29, 2021 (on the HAMERS’ objection to the charging lien and motion to strike), which the HAMERS believed to have been unreported. App. Ex. L., page 2, paragraph 10.

In fact, the hearing of December 29, 2021, was reported, and a copy of the transcript was later filed on June 15, 2022. App. Ex. That transcript reflects the following:

a) ILG contended, for the first time at the hearing, that Ms. HAMER had engaged in “improper, abusive and insulting” behavior, “overall disruptive to the [ILG] office”. Transcript, App. Ex. M, page 9 of transcript,

lines 2-3. However, to support that contention, ILG offered only the following colloquy from an ILG receptionist:

And when I tried to pull up [the client's] name, I asked her to repeat her name and I repeated it myself to make sure that I had it right. And she made the comment that she understood that I'm – I don't speak Englishing well. That this is America. And that was really offensive because I was trying to help the client here. . . . [Ms. HAMER] was really aggressive.

Transcript of December 29, 2021, hearing, App. Ex. M, transcript page 15, lines 9–15, 22.

Notwithstanding the “offensive” tone of that initial conversation, the paralegal and Ms. HAMER immediately spoke again in a follow-up call, during which Ms. HAMER indicated that “she will call every 30 minutes until she talks to someone”. Transcript, App. Ex. M, transcript page 16, lines 13-16.

For her part, Ms. HAMER denied that she asked anyone to do anything “illegal or unethical” (transcript page 28, lines 8-10) or that she threatened anyone (page 28, lines 15-17).

b) In response to what appeared to be ILG's suggestion of misconduct on the part of Ms. HAMER, the Court noted:

. . . I want to get to the point on this because it sounds like we've got a [un]ruly client coming in. I don't understand why a

lawyer don't [*sic*] pick up the phone and call her back. I've been in private practice and I get clients calling in - - it's not unusual to get clients calling in with bad behavior. So why don't you get a lawyer to pick up the phone and call this lady back? Why does it take a day to call a client back? . . .

Transcript, App. Ex. M, transcript page 18, line 20, through page 19, line 8.

c) There was no other evidence of client misconduct in the hearing. ILG's counsel nonetheless contended that what had transpired was "a client's improper conduct" (transcript, pages 31-32). ILG counsel conceded that it was up to the trial court to determine the nature of "improper conduct" within the meaning of the Contingent Fee Retainer Agreement. Transcript, page 32, lines 8-12. In the event that the ILG was deemed to have *properly* terminated the contract, ILG argued that it was entitled to be compensated under hourly rate provisions. Transcript, page 35, lines 18-21. Alternatively, if the termination was *not* proper, ILG still sought recovery under the Pre-Litigation Service Agreement, "because that contract was completed and fulfilled". Page 36, lines 4-9.

d) The HAMERS objected to the payment of 10% of the settlement amount under the Pre-Litigation Service Agreement, for "a contingency that they did not achieve". Transcript, page 51, lines 4-7. The basis for that contention was that "the law says that they are not entitled to anything if

they voluntarily withdraw”. Transcript, page 54. ILG’s response, in the hearing, was that entitlement to the 10% under the Pre-Litigation Service Agreement was not “contingent” and “had been earned”. Transcript, page 55, lines 5-10.

Based on the foregoing, it is undisputed that the trial court’s resolution of ILG’s entitlement under Pre-Litigation Service Agreement, at least as of that hearing, was dependent on its construction of that Agreement (and the incorporated language of the Retainer Agreement), as to whether it was dependent on any “contingency”, as argued by the HAMERS, or not, as argued by ILG.

The HAMERS filed their motion for summary judgment and supporting materials, App. Ex. J, K, and L, to which ILG responded, App. Ex. N. The lower court denied the motion by order rendered July 27, 2022, noting the existence of a question of fact as to whether ILG could establish a *Faro* exception. App. Ex. P.

ILG then filed a separate Motion For Entitlement To Attorney’s Fees, served February 17, 2023. App. Ex. Q. This Motion served as the procedural vehicle on which the trial court ultimately granted relief to ILG. In that Motion, ILG relied upon both the Pre-Litigation Service Agreement

(of May 6) and the Contingent Fee Retainer Agreement (May 8). ILG alleged “improper conduct” on Ms. HAMER’s part (paragraph 10). As to its rights under the Pre-Litigation Service Agreement, ILG argued that the 10% payment was *not* “contingent” under the terms of that contract, citing *Dynamic Pub. Adjusters, Inc. v. Rodriguez*. Motion, page 4.

A hearing was held on ILG’s newly-filed motion on July 19, 2023. ILG continued to contend that Ms. HAMER’s “improper conduct” justified ILG’s withdrawal, with the result that ILG was entitled to recover under both the May 8 Contingent Fee Retainer Agreement and the May 6 Pre-Litigation Service Agreement. Transcript, page 24, lines 11-20.

The trial court entered its dispositive order on August 28, 2023. App. Ex. S. In that order, the trial court explicitly held that ILG was entitled to 10% of the settlement proceeds under the Pre-Litigation Service Agreement. Order of August 28, 2023, page 4. However, the trial court rejected ILG’s recovery under the Contingent Fee Retainer Agreement, based upon *Faro* and the court’s finding that neither *Faro* exception applied. Order, page 5. The Court granted ILG’s Motion, to the extent of fees under the Pre-Litigation Service Agreement, but denied the motion

under the Contingent Fee Retainer Agreement and struck ILG's notice of charging lien.

Appellants timely filed their motion for rehearing. App. Ex. T. The lower court denied that motion by order rendered November 3, 2023. App. Ex. U. Notice of appeal was filed November 3, 2023. App. Ex. V. ILG did not file a notice of cross-appeal.

SUMMARY OF ARGUMENT

I. The Trial Court erred, as a matter of law, in its construction and application of the provisions of the Pre-Litigation Service Agreement as not dependent on a contingency which was not fulfilled as of ILG's withdrawal from representation. This case presents no disputed issues of fact, and the language of the parties' agreements is not at issue. The Pre-Litigation Service Agreement incorporated by reference "all the terms and conditions" of the Contingent Fee Retainer Agreement and was accompanied by the Florida Bar form Statement of Client's Rights for contingency agreements. The incorporated language specifically provided that, in the event that ILG gave notice to Appellants of the cancellation of the Contingent Fee Retainer Agreement, Appellants would not be obligated to ILG "to pay any fees for any/all work performed". Because payment of the 10% "pre

litigation/adjusting” fee was contingent upon recovery of “Client proceeds . . . in litigation”, because ILG withdrew the representation without legal justification, and because the settlement contingency had not occurred prior to ILG’s withdrawal, Appellants were not obligated to pay ILG under the Pre-Litigation Service Agreement. The lower court erred, as a matter of law, in so holding.

ARGUMENT

THE TRIAL COURT ERRED, AS A MATTER OF LAW, IN ITS CONSTRUCTION AND APPLICATION OF THE PROVISIONS OF THE PRE-LITIGATION SERVICE AGREEMENT AS NOT DEPENDENT ON A CONTINGENCY WHICH WAS NOT FULFILLED AS OF ILG’S WITHDRAWAL FROM REPRESENTATION.

Standard of review: The standard of review of the Trial Court’s rulings of law on its construction and application of the language of the parties’ contracts is *de novo*. *Calderon v. J. B. Nurseries, Inc.*, 933 So.2d 553 (Fla. 1st DCA 2006).

This appeal presents a straightforward legal question: Where the Pre-Litigation Service Agreement, prepared by ILG, incorporated by reference

language from a separate contract which stated that Appellants would not be liable for payment to ILG in the event that ILG withdrew, were Appellants liable for fees under the Pre-Litigation Service Agreement if ILG withdrew before occurrence of the contingency of receipt of proceeds? The Pre-Litigation Service Agreement incorporated a provision which stated that the “Client shall not be obligated to pay” if ILG cancelled the representation. Appellants contend that the lower court erred, as a matter of law, in ignoring the “Client shall not be obligated to pay any fees” language incorporated into the Pre-Litigation Service Agreement by reference, and in holding that the “10% of proceeds of settlement” fee had been “earned”, even though ILG withdrew prior to settlement. Stated another way, the trial court’s construction of the Pre-Litigation Agreement, that the 10% fee was “earned” as of filing of suit, rather than contingent on receipt of settlement proceeds, was not legally correct.

There is no dispute that the Pre-Litigation Service Agreement at issue herein was a contract between a “client” and an “attorney”. See, e.g., ILG’s own use of those labels in its agreement. App. Ex. H, Ex. A. A proper analysis of the legal question must therefore be grounded in our understanding of the unique relationship between an attorney and a client.

It is not, as suggested by ILG in the lower court, as simple a matter as, for example, a services contract between an insured and a public adjuster. Rather, attorney-client interactions are governed by a higher standard.¹

For example, Rule 4-1.5(f) of the Rules Regulating the Florida Bar defines “contingent fees” as a fee which is contingent on the outcome of the matter for which the service is rendered, characterized by a “percentage” that will accrue to the lawyer in the event of settlement, trial or appeal. Nothing in that definition would distinguish between services rendered “pre-litigation” or those rendered in the course of litigation. Rule 4-1.5(f)(4) speaks to such contracts as being “an arrangement for . . . fee . . . in which the compensation is to be dependent or contingent in whole or in part on the successful prosecution or settlement” Given those definitions, there is no question that the Pre-Litigation Service Agreement was a “contingent” fee agreement, in that ILG’s compensation under the

¹ For that reason alone, *Dynamic Public Adjusters, Inc. v. Rodriguez*, 155 So.2d 384 (Fla. 3rd DCA 2014), relied on by the trial court, is distinguishable. Moreover, unlike the case at bar, in *Rodriguez*, controversy was not between the adjuster and the insured, but rather between the adjuster and a third party “appraiser” apprentice. Indeed, the Third District acknowledged that the adjuster’s fee was “contingent”, but that the contingency was satisfied either by adjustment, mediation, appraisal, arbitration, lawsuit or otherwise” *Rodriguez*, at 387.

agreement was dependent upon the client's receipt of "Client proceeds recovered in litigation". That is, in the event that the client received no such proceeds, ILG would not have been entitled to compensation, even under the Pre-Litigation Service Agreement, and regardless of whether the "pre-litigation services" had been started, were continuing, or had been completed at the time of "client receipt of proceeds".

This conclusion is buttressed by the incorporation by the Pre-Litigation Service Agreement of the whole of the Contingent Fee Retainer Agreement (with the exception of the separate 33% attorney fee in Section 1).

I/we acknowledge that all the terms and conditions (other than the section on Attorney's Fees) as set forth in the **ATTORNEY'S CONTINGENT FEE RETAINER AGREEMENT** signed by Client are fully incorporated herein.

Included in the provisions so incorporated was the following, which is language consistent with standard contingency fee agreements:

Client recognizes the right of Attorney to withdraw from the case in its sole discretion, whenever it is of the opinion, based on the specific circumstances surrounding Clients case, that the chances for success do not justify Attorneys time and expense in going forward. In that event, ***upon notification to Client of cancelling this agreement***, Attorney shall have no further duty to Client and ***Client shall not be obligated to pay any fees to Attorney for any/all work performed during that time.***

The effect of this language, incorporated in full into the Pre-Litigation Service Agreement, was to provide that, in the event that ILG notified the HAMERS of cancellation of the attorney-client relationship before the HAMERS' receipt of settlement proceeds – as indisputedly happened in this case – the HAMERS were “not obligated to pay any fees to Attorney [ILG] for any/all work performed”. That is, even with regard to so-called “pre-litigation” services, the HAMERS owed no fees in the event that ILG gave notice of cancellation of the relationship before receipt of settlement proceeds.²

Were there any question about the “contingent” nature of the Pre-Litigation Service Agreement, that was resolved by the timing of execution of ILG's own documents. The Pre-Litigation Service Agreement was

² It bears noting that, in this case, the Pre-Litigation Service Agreement promising a fee of 10% of proceeds was signed on May 6, and that the Contingent Fee Retainer Agreement promising of a fee of 33% of proceeds was executed just two days later. It is implausible to believe that ILG earned 10% of the total proceeds in two days' worth of “pre-litigation services”, and its suggestion that it did so borders on the inequitable. Rather, the effect of ILG's two contracts was simply to give ILG a 43% share of the proceeds. Had this been a tort claim, ILG's fee would have been presumptively excessive. As it is, it was merely cumulative of and charging extra for pre-litigation work typically performed by attorneys for insurance claimants.

signed May 6, 2019. The subsequent Contingent Fee Retainer Agreement was executed two days later, May 8. *However*, the Statement of Client's Rights – that document required by Rule 4-1.5 for all contingent fee arrangements – was executed *May 6*. That is, the Statement of Client's Rights referring to the HAMERS' contractual relationship with ILG was signed the same day as the Pre-Litigation Service Agreement, *and before the subject Contingent Fee Retainer Agreement*. *Quaere*, if ILG did not believe that the Pre-Litigation Service Agreement was a “contingent fee agreement” within the proscription of Rule 4-1.5, why did ILG require a Statement of Client's Rights (under Rule 4-1.5) to be signed the same day?

In order to escape the language and timing of its own agreements – drafted by ILG itself – ILG attempted to invoke one of the two exceptions to the failure of the contingency found in *Faro v. Romani*, 641 So.2d 69 (Fla. 1994). There, the Florida Supreme Court readdressed the question of whether an attorney could withdraw from representation in a contingent fee case before the happening of the contingency and still be entitled to a fee.

The Court first noted the predicate rule:

In *The Florida Bar v. Hollander*, 607 So.2d 412 [at 415] (Fla.1992), we held that “any contingency fee contract which permits the attorney to withdraw from representation without

fault on the part of the client or other just reason, and purports to allow the attorney to collect a fee for services already rendered would be unenforceable and unethical.”

As in *Hollander* – and as in the case at bar – the attorney in *Faro* claimed to seek recovery “for services already rendered”. However, there was a contingency to payment – recovery from the insurer. Before that contingency occurred, the attorney withdrew from representation “and the agreement, like the attorney-client relationship, was terminated” – as in the case at bar. Held, when an attorney withdraws from representation upon his own volition, and the contingency of recovery has not occurred, the attorney forfeits all rights to compensation. *Faro*, at 71.

This result was subject to the exception for situations where the attorney was compelled to withdraw under the Bar rules. However, in the case at bar, there is no question but that the trial court declined to find a *Faro* exception. See the Order On ILG’s Motion rendered August 28, 2023, App. Ex. S, page 5 (finding that, “contrary to ILG’s position, it is evident that neither exception applies”).

The gist of ILG’s alternative argument in the trial court, and apparently accepted by the court, was that, even though the 10% fee in the Pre-Litigation Service Agreement was framed in terms of a percentage, it

was in fact an “earned”, not “contingent”, fee, simply to be paid at some later date. That analysis fails even superficial examination, as the amount of and entitlement to a fee could not be determined unless and until the happening of some future *contingent* event, the recovery by the HAMERS of proceeds. Moreover, were the HAMERS *not* to have recovered proceeds, then there would have been no fee owed.

Such a result would also run counter to the definition of a “contingent fee” in Rule 4-1.5 and court’s traditional understanding of a “contingency fee” arrangement.

A contingency fee arrangement occurs when a law firm does not bill or expect payment until and unless the contingency is achieved. Contingency fee arrangements are typically contingent upon a successful outcome.

Wright v. Guy Yudin & Foster, LLP, 176 So.3d 368, at 372 (Fla. 4th DCA 2015) (quoting from *Brickell Place Condo Ass’n v. Joseph H. Ganguzza & Associates, P.A.*, 31 So.3d 287 (Fla. 3d DCA 2010)). See also BLACK’S LAW DICTIONARY 320 (6th ed.1990) (defining a contingency contract as “[a] contract, part of performance of which at least is dependent on the happening of a contingency. Sometimes used to refer to fee arrangement

with attorney who agrees to accept [a] fee on the contingency of a successful outcome”)).

This result is consistent with the bulk of Florida cases applying these principles. See, for example, *Mineo Salcedo Law Firm, P.A. v. Cesard*, 333 So.3d 222 (Fla. 4th DCA 2022), in which the Fourth District noted that where the law firm’s recovery of fees was contingent upon a recovery by the client as the triggering event, the arrangement satisfied the definition of a contingency fee agreement.

This appeal therefore presents a straightforward question of law: Was the Pre-Litigation Service Agreement between the “attorney” ILG and the “client” Appellants a “contingent” fee agreement, payment under which was dependent upon recovery by Appellants? That it was is supported by the very wording of ILG’s agreements, which noted that the attorney would be paid nothing if notice of cancellation of the relationship were given by the attorney, and by the simultaneous execution of the Florida Bar form Statement of Client’s Rights required for “contingent fee” agreements. The ethics of the legal profession demand that the attorney’s right to bill a client be exercised with a healthy restraint and that any doubts be resolved in favor of the client, rather than the law firm. *Haines v. Sophia*, 711 So.2d

209 (Fla. 4th DCA 1998). Indeed, retainer agreements are construed against the attorney and in favor of the client. *Mavroleon v. Orrego*, 351 So.3d 102 (Fla. 3rd DCA 2022); *Reid v. Johnson*, 106 So.2d 624 (Fla. 3rd DCA 1958) (rejecting attorney’s claim for “extra services”, resolving ambiguities concerning the agreement against the attorney).

The lower court’s holding to the contrary should be reversed, as a matter of law, with remand for the denial of ILG’s recovery under the Pre-Litigation Service Agreement.

CONCLUSION

The Trial Court erred, as a matter of law, in its construction and application of the provisions of the Pre-Litigation Service Agreement as not dependent on a contingency which was not fulfilled as of ILG’s withdrawal from representation.

This Court should therefore reverse the Order On Insurance Litigation Group’s Motion For Attorney’s Fees and Costs and remand for entry of an order in Appellants’ favor on ILG’s Motion.

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of this initial brief was furnished upon filing by this Court's e-portal to counsel of record herein, Jana A. Rauf, 1500 NE 162nd Street, Miami, FL 33162, counsel for Appellee, by email to jana@ilgpa.com, this June 10, 2024.

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CERTIFICATE REGARDING FONT

I HEREBY CERTIFY that the foregoing brief complies with the font and form requirements of Fla. R. App. P. 9.210(a)(2), being Arial 14-point, and that the brief does not exceed 13,000 words (under the guidelines enunciated in Fla. R. App. P. 9.040(e)).

/s/ William B. Price

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