Not Reported in A.2d, 2009 WL 348589 (N.J.Super.A.D.)
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.
George SILVESTRO and Lisa Silvestro, Plaintiffs,
v.
GROUPE LACASSE, INC., individually and as subsidiary of Haworth, Inc., Haworth, Inc., individually and as successor in interest and the agent for Groupe Lacasse, Inc., and Eagle Office Furnishings individually, and t/a Eagle Office Furnishings, Defendants.
Argued Jan. 22, 2009.
Decided Feb. 13, 2009.

West KeySummary
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Evidence that terminated law firm took large risk in developing a personal injury case supported apportionment of attorney fee between firm and successor counsel above firm's standard hourly rates. Injured clients hired firm to represent them in a personal injury case. Firm developed case for three years before clients terminated representation and hired new counsel for the remaining year. Clients won suit, and judge awarded firm 40% of the contingent fee, rather than what its hours and standard rates would have suggested.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-990-04.
David A. **Mazie** argued the cause for appellant/cross-respondent **Mazie**, Slater, Katz & Freeman, L.L.C. (**Mazie**, Slater, Katz & Freeman, L.L.C., attorneys; Mr. **Mazie**, of counsel and on the brief).

Ronald B. Grayzel argued the cause for respondent/cross-appellant Levinson Axelrod, P.A. (Levinson Axelrod, P.A., attorneys; Richard J. Levinson, on the brief).

Before Judges FISHER and KING.

PER CURIAM.

***1** In this appeal, we review an order that divided between two law firms a contingent fee generated from a settlement of $4,150,000 received by plaintiffs in this personal injury case. Because the judge fairly divided the fee based upon his well-supported understanding of the performances of both firms and his proper application of the applicable equitable principles, we affirm.

The law firm of Levinson Axelrod, P.A. (Levinson Axelrod) commenced this suit in February 2004 on behalf of plaintiff George Silvestro and his wife, alleging that plaintiff suffered a head injury when a hutch fell on him while he sat at a desk at his place of employment on March 10, 2003. Levinson Axelrod continued to expend a considerable amount of time during its representation of plaintiffs in this case until terminated and replaced by Nagel, Rice & **Mazie** on June 20, 2006.[FN1] Nagel, Rice & **Mazie** later dissolved and was succeeded in this matter by **Mazie**, Slater, Katz and Freeman, L.L.C. (**Mazie** Slater).

> FN1. The record does not reveal plaintiffs' reasons for replacing Levinson Axelrod. According to the judge's findings, Levinson Axelrod expended 601.3 hours of time in this case.

The suit was settled in November 2007 with plaintiff and his wife receiving $4,000,000 from defendant Groupe Lacasse, Inc., and $150,000 from

defendant Eagle Office Furnishings. By motion, the trial court entered an order on December 7, 2007, setting the legal fee due from plaintiffs at $1,127,854.64.

Levinson Axelrod and Mazie Slater agreed upon the repayment of costs incurred on plaintiffs' behalf, but could not agree upon an apportionment of the attorney fee. They did agree to have the issue resolved by the trial court in an expedited fashion, advising the court that discovery was not necessary and, as described in a letter from Mazie Slater to the court, that "the lien issue can be resolved with the relaxation of evidence rules and based on certifications and other submissions." After reviewing the parties' written submissions and hearing oral argument, Judge Phillip Lewis Paley rendered a thorough written decision on March 14, 2008 and ordered that **Mazie** Slater receive 60% and Levinson Axelrod receive 40% of the contingent fee.

Mazie Slater appealed and Levinson Axelrod cross-appealed. On appeal, **Mazie** Slater contends that Levinson Axelrod should not be entitled to more than a fee based upon the hours it reasonably expended multiplied by the firm's standard hourly rates. Levinson Axelrod, on the other hand, argues that the judge correctly chose not to limit its recovery to an hour-based fee, but asserts that its percentage of the fee should have been greater than 40%. We reject these arguments and affirm.

A claim in such circumstances rests upon the doctrine of quantum meruit; that is, the former attorney is entitled to "as much as is deserved." *Glick v. Barclays De Zoete Wedd*, 300 *N.J.Super.* 299, 310, 692 A.2d 1004 (App.Div.1997); *LaMantia v. Durst*, 234 *N.J.Super.* 534, 537, 561 A.2d 275 (App.Div.), *certif. denied*, 118 *N.J.* 181, 570 A.2d 950 (1989). As we said in *Glick*, "the crucial factor in determining the amount of recovery is the contribution which the lawyer made to advancing the client's cause." 300 *N.J.Super.* at 311, 692 A.2d 1004. *See also Bruno v. Gale, Wentworth & Dillon Realty*, 371 *N.J.Super.* 69, 74-75, 852 A.2d 198 (App.Div.2004); *Dinter v. Sears, Roebuck & Co.*, 278 *N.J.Super.* 521, 531-32, 651 A.2d 1033 (App.Div.), *certif. denied*, 140 *N.J.* 329, 658 A.2d 728 (1995); *LaMantia, supra*, 234 *N.J.Super.* at 539-43, 561 A.2d 275; *Anderson v. Conley*, 206 *N.J.Super.* 132, 150-51, 501 A.2d 1057 (Law Div.1985); *Buckelew v. Grossbard*, 189 *N.J.Super.* 584, 587-88, 461 A.2d 590 (Law Div.), *aff'd o.b.*, 192 *N.J.Super.* 188, 469 A.2d 518 (App.Div.1983).

***2** In *Glick*, as a guide to courts in future disputes, we suggested the potential outcome in three particular circumstances. We indicated that "if the predecessor's work, no matter how extensive, contributed little or nothing to the case, then the ceding lawyer should receive little or no compensation." 300 *N.J.Super.* at 311, 692 A.2d 1004 (citing *Dinter, supra*, 278 *N.J.Super.* at 535, 651 A.2d 1033). If, however, the former attorney "cedes to his successor a substantially prepared case which resulted from an extensive investment of time, skill and funds," we held that the former attorney might be entitled to a fee greater than that derived by the hours reasonably expended and the attorney's standard hourly rate. *Ibid.* And, finally, we observed that "if a ceding lawyer's work contributed to a recovery by the client, but the new attorney was crucial in the success of the case, then the predecessor's compensation should be based, at most, upon a standard hourly rate." *Ibid.* (citing *Anderson, supra*, 206 *N.J.Super.* at 150-51, 501 A.2d 1057).

In examining the firms' representation of plaintiffs, Judge Paley acknowledged that both had provided highly significant contributions to their clients' ultimate success in this problematic case. These findings, which are entitled to our deference, *Rova Farms Resort, Inc. v. Investors Ins. Co.*, 65 *N.J.* 474, 483-84, 323 A.2d 495 (1974), must be understood in light of the difficulties presented by the case itself, which the judge outlined:

> The case was complex. Substantially disputed were the authenticity of [plaintiff's] neurological symptoms and his credibility as to how the incident occurred. [Plaintiff] was alone in the office when the hutch fell. The hutch, or a component

> of it, had fallen only once [causing defendants] to argue that [plaintiff] may have fabricated the incident, at worst, and was comparatively negligent, at best.
>
> As noted, there was a serious question as to whether [plaintiff] was a malingerer with no neurological basis for his complaints. [Plaintiff] argued that he sustained a significant brain injury which produced a partial loss of vision, stuttering, balance deficiencies, and extensive memory shortcomings. Defendants contended that this matrix of problems is supported nowhere in medical literature as attributable to a brain injury. Defendants argued, further, that [plaintiff] suffers from a psychological disorder not caused by the hutch's fall which accounts for his symptoms. While plaintiffs' experts opined that these deficits were all likely due to the accident, they conceded that these deficits are extremely unusual and do not normally emanate from a head injury. In essence, plaintiffs' experts made diagnoses of exclusion (i.e., there is no other explanation for these various deficits other than the accident itself).

After noting the difficulties presented in proving both liability and damages, Judge Paley considered the three fee dispute categories loosely described in *Glick*, and concluded that "the fee awarded Levinson Axelrod must compensate it for the risks it took and the substantial contribution it made to the ultimate outcome." As such, Judge Paley determined that Levinson Axelrod was entitled to a percentage of the contingent fee and not just an hour-based fee.

***3** In his written opinion, the judge described Mazie Slater's contribution to the ultimate settlement as "profound" and found that Mazie Slater "effectuated a marvelous settlement through energetic and innovative analysis and effort." In combating defendants' contentions that plaintiff "might have orchestrated his injury in some way and that natural physical forces would not have permitted the hutch to be dislodged so as to fall accidentally," Mazie Slater produced "a taped re-enactment of the fall at a testing facility which demonstrated how minor forces were able to dislodge the hutch and cause its fall." Mazie Slater "took numerous depositions of defense witnesses" and, through interrogation, "obtained a concession from a defense engineer that an alternative design was feasible, cost effective, and would have prevented the fall under reasonably foreseeable conditions." Judge Paley also provided findings about **Mazie** Slater's efforts in enhancing plaintiffs' damage proofs:

> [**Mazie** Slater] obtained proof from two physicians who treated [plaintiff] at the time of the injury that there was no organic basis for his amnesia or other problems. [**Mazie** Slater] obtained proof that [plaintiff] suffered from a conversion and somatoform disorder, that he had suffered a mild brain injury, and that the accident was at least "a substantial factor" in exacerbating the conversion disorder. [**Mazie** Slater] obtained proof from defense physicians that [plaintiff's] condition-physiological or psychosomatic-is permanent. Defense counsel conceded that the expert depositions of Mr. **Mazie**-and the concessions obtained in those depositions from the defense experts-was a critical factor in the settlement.

While acknowledging **Mazie** Slater's contribution, Judge Paley also recognized that those accomplishments were based "on the foundation established by Levinson Axelrod," which was "substantial." The judge noted that Levinson Axelrod took on great financial risk in its expenditure of time and funds in representing plaintiffs at the outset and for the three following years. The judge found that Levinson Axelrod retained numerous experts including: a neurologist; a neuropsychologist; a psychiatrist; a products liability expert to address the hutch's alleged defective design and installation; a vocational expert; an expert in compensation and earning capacity in plaintiff's field; and an economist to estimate the present value of the lost income claim. Levinson Axelrod eventually participated in mediation sessions with a retired Superior Court judge, who recommended a settlement between

$4,000,000 and $5,000,000, a range within which the case ultimately settled. In reliance upon a factor identified in *LaMantia, supra,* 234 *N.J.Super.* at 540, 561 A.2d 275, the judge gave weight to the fact that Levinson Axelrod spent three years with the case as opposed to Mazie Slater's involvement for less than one year.

As a result of Judge Paley's findings, he implicitly rejected the application here of *Glick's* holding that a ceding lawyer "should receive little or no compensation" when "contribut[ing] little or nothing to the case." 300 *N.J.Super.* at 311, 692 A.2d 1004. The judge recognized that Mazie Slater did not argue that Levinson Axelrod's services were "sterile or counterproductive to the ultimate resolution" of the case. To the contrary, the judge observed, in addition to his other findings, that the motion for partial summary judgment filed on plaintiffs' behalf by Mazie Slater "was based, in large part, on the liability depositions taken of experts hired by Levinson Axelrod" and "although the motion was denied, the documents assembled in support of the motion [were] arguably a significant part of persuading defense counsel to settle." The judge recognized that Levinson Axelrod "aggressively and competently pursued the case in accordance with its customary high professional standards," as was evidenced by the settlement offer suggested by the mediator to defendants during Levinson Axelrod's time as plaintiffs' counsel.

***4** In turning to another circumstance mentioned in *Glick,* Judge Paley recognized that Levinson Axelrod provided Mazie Slater with "a substantially prepared case which resulted from an extensive investment of time, skill and funds," which, according to *Glick* "might ... entitle[ ] [the former attorney] to compensation greater than the standard hourly rate." *Id.* at 311, 692 A.2d 1004. As the judge outlined in his findings, Levinson Axelrod invested considerable time and expense in a suit that was both complex and difficult, and met high standards in turning over a substantially complete file to **Mazie** Slater.

Notwithstanding the judge's finding that Levinson Axelrod turned over a "substantially prepared case," **Mazie** Slater invokes *Glick* and argues that its performance was "crucial," as evidenced by the judge's comment that the firm's contribution was "profound." From this, **Mazie** Slater argues that we must rigidly apply *Glick's* assumption that when a former attorney's work "contributed to a recovery by the client, but the new attorney was crucial in the success of the case, then the predecessor's compensation should be based, at most, upon a standard hourly rate." *Ibid.*

We recognize that Judge Paley was laudatory of Mazie Slater's contribution, but the judge also appreciated Levinson Axelrod's significant contribution and observed that because of its termination Levinson Axelrod "lacked the opportunity" to continue to build on the solid foundation it created and complete the job. As to what might have occurred, the judge determined it was "not beyond possibility that Levinson Axelrod might have obtained the same or other telling concessions at depositions, might have negotiated differently, and might have obtained a more substantial settlement."

We reject Mazie Slater's contention that its "profound" performance trumps Levinson Axelrod's substantial contributions not only because, as Judge Paley recognized, it "does not permit [the former attorney] to benefit from the risk taken and thereby discourages firms from taking such cases," *LaMantia, supra,* 234 *N.J.Super.* at 543, 561 A.2d 275, but also because it represents an oversimplification of the manner in which such disputes may be equitably resolved. That is, Mazie Slater's argument presumes that the variety of fee disputes may be distilled into a few simple categories and that *Glick* created only a handful of circumstances into which all cases must fit.

As we held in *LaMantia,* it must be understood that "when dealing with an equitable determination such as quantum meruit, hard and fast rules are difficult to apply, let alone construct." *Id.* at 539-40, 561 A.2d 275. Mazie Slater's argument fails to take into

consideration that *Glick* did not deal with the circumstance that we consider here-a situation where the former attorney spent a large amount of time and took a considerable risk in building a solid foundation in a problematic case and was followed by an attorney who also made considerable, even "profound," contributions to gaining a sizable settlement for the client. In rejecting Mazie Slater's argument that an attorney's "crucial" contribution outweighs the former attorney's turnover of "a substantially prepared case," we do not part company with *Glick* but merely resolve a dispute different from those contemplated by *Glick*. We agree with Judge Paley's determination that Levinson Axelrod was equitably entitled to greater compensation than what its hours and standard rates would suggest, and we have no cause to second guess Judge Paley's finding that a 60/40 split of the fee, with Mazie Slater receiving the larger portion, represents a fair resolution of the dispute.

***5** Affirmed.

N.J.Super.A.D.,2009.
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