

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-240

Judge:

Complainant:

ORDER

October 8, 2024

The Complainant alleged a superior court judge made an improper ruling, because the court of appeals reversed the decision.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Denise K. Aguilar, Barbara Brown, Louis Frank Dominguez, and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on October 8, 2024.

questions the misconduct of Judge because he has ignored all the violations of attorney professional conduct. filed fraudulent claims and given false testimony and engaged in conduct intended to harass his former client, delay Settlement disbursement proceedings, and abuse the legal process for his own gain. knew what he is doing to be unjust or illegal abuses of process. was employing untruthful means in further his causes for claiming money that he is not legally entitled to. sought out to mislead the judge or judicial officer, attorney, Defense Attorney by artifice or false statements of fact. is committing acts involving moral turpitude or dishonesty, failing to perform legal services competently, and refusing to properly account to clients his charges for attorney fees.

is also concerned that Judge is completely disregarding the unprofessional conduct of and awarding him any money for a failed personal injury case that was only able to prove . Both and Court dismissed case . It is very hard not to question the ethics of Judge in this matter. brought all this information to Judge and he ignored it. would also be concerned of any vindictiveness from Judge might have on my case due to the filing of this complaint.

filed appeal and Appellate Court ruled a decision in favor of to reverse the Stipulated Judgement/Liquidated Damages and Writ of Garnishment, is unfair and not reasonable and thus deemed an unlawful punishment

Court Decision

¶

¶

¶

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA

OFFICE OF _____, *Plaintiff/Appellee,*

v.

_____, *Defendant/Appellant.*

No.
FILED

Appeal from the _____ Court in _____ County
No.
The Honorable _____, Judge

REVERSED AND REMANDED

COUNSEL

By _____,
Counsel for Plaintiff/Appellee

Defendant/Appellant

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MEMORANDUM DECISION

Judge _____ delivered the decision of the Court, in which
Presiding Judge _____ and Judge _____ joined.

, Judge:

¶1 _____ appeals the _____ court's refusal to set aside a judgment against her. For the reasons that follow, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

¶2 At issue here is the enforceability of a liquidated damages clause. _____ ("Lawyer") agreed to represent _____ ("Client") in her _____ medical malpractice and medical battery lawsuit ("Tort Lawsuit"). Lawyer and Client agreed that Client would be responsible for litigation costs and expenses. Lawyer withdrew from representing Client in the Tort Lawsuit after a dispute over costs and expenses in _____.

¶3 Lawyer later filed this lawsuit against Client in _____ to recover _____ in litigation costs and expenses incurred in the Tort Lawsuit. The superior court ordered arbitration. The arbitrator awarded Lawyer only _____ ("Arbitration Award"), finding that a different lawyer incurred the remaining _____ in costs. Client appealed the Arbitration Award and countersued Lawyer for legal malpractice.

¶4 The _____ court dismissed Client's legal malpractice claim and the parties entered a settlement agreement ("Settlement Agreement"). The Settlement Agreement required Client to pay Lawyer a total of _____ in five monthly installments of _____. The Settlement Agreement was agreed upon in open court and the parties jointly moved to voluntarily dismiss the case.

Liquidated Damages Clause

¶5 The Settlement Agreement contained a liquidated damages clause that required Client to pay another _____ in damages to Lawyer if any of her monthly _____ payments were untimely:

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¶6 Lawyer received Client's first payment one day late, the second payment two days late and the third payment three days late. Client paid the two remaining payments on time for a total of .

¶7 After the second late payment, Lawyer recorded the Judgment and notified Client that she breached the Settlement Agreement. And, based on the liquidated damages clause, Lawyer demanded an additional from Client.

¶8 Client moved the court to find that she satisfied the terms of the Settlement Agreement, and to order Lawyer to cease his collection efforts for the liquidated damages. The court denied both motions, finding (1) the Settlement Agreement was enforceable, (2) Client breached its terms by making two untimely payments, (3) Client was required to pay an additional under the Judgment and liquidated damages clause, and (4) Client did not satisfy the Judgment and breached the Settlement Agreement because she failed to pay that additional sum. Client unsuccessfully moved for reconsideration and relief from the Judgment, arguing, among other things, that she satisfied the Settlement Agreement and the Judgment was void. Lawyer filed a garnishment action.

¶9 Client appealed. We have jurisdiction. A.R.S. §§ 12-120.21 and -2101(A)(1).

DISCUSSION

¶10 Client raises several claims in her opening brief, including that Lawyer defamed her, violated the professional rules of conduct, and engaged in unlawful debt collection practices. Because Client did not raise those claims before the court, we will not tackle them for the first time on appeal. *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26-27, ¶ 13 (App. 2000).

¶11 Client seeks relief from the Judgment pursuant to Arizona Rule of Civil Procedure 60(b). Arizona courts are authorized to vacate a

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final judgment under various circumstances, including when “the judgment has been satisfied” or “applying it prospectively is no longer equitable.” Ariz. R. Civ. P. 60(b)(5). We review the denial of a Rule 60 motion for an abuse of discretion. *Gonzalez v. Nguyen*, 243 Ariz. 531, 533, ¶ 8 (2018). A court abuses its discretion if there is no evidence to support its conclusion or the conclusion is legally incorrect, clearly untenable or a denial of justice. *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, ¶ 17 (App. 2006).

¶12 Client argues she satisfied the terms of the Settlement Agreement because she paid _____ and the remaining _____ is unenforceable. Lawyer argues the _____ owed under the Judgment is a reasonable and enforceable liquidated damages clause. We review de novo whether a settlement agreement is enforceable. *Robertson v. Alling*, 237 Ariz. 345, 347, ¶ 8 (2015).

¶13 Settlement agreements are contracts and we interpret them under general contract principles. *Emmons v. Superior Ct.*, 192 Ariz. 509, 512, ¶ 14 (App. 1998). Arizona courts will enforce a contract unless its terms are unconscionable, illegal or against public policy. *Dobson Bay Club II DD v. La Sonrisa de Siena, LLC*, 242 Ariz. 108, 115, ¶ 39 (2017).

¶14 Arizona courts will not enforce a liquidated damages clause that acts as a penalty because the “central objective behind the system of contract remedies is compensatory, not punitive.” *Dobson Bay*, 242 Ariz. at 110, ¶ 9 (quoting Restatement (Second) of Contracts § 356, cmt. a). A liquidated damages clause acts as a penalty when the clause awards the non-breaching party more money than would be “fair compensation” for the breach of contract. *Aztec Film Prods., Inc., v. Quinn*, 116 Ariz. 468, 470 (App. 1977) (holding a penalty is “designed to punish” or “prevent a breach by the threat of punishment.”).

¶15 But liquidated damages clauses may be enforceable if they satisfy two requirements:

- First, the stipulated amount must be a reasonable forecast of just compensation for the harm anticipated or actually caused by the breach of contract. *Dobson Bay*, 242 Ariz. at 111, ¶¶ 11–15.
- Second, the potential harm caused by the breach must be hard to estimate. *Id.*

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THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**