

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2618-09T3

REILLY, SUPPLE & WISCHUSEN,  
LLC.,

Plaintiff,

v.

MALCOLM BLUM,

Defendant-Third Party  
Plaintiff/Appellant/  
Cross-Respondent,

v.

MICHAEL P. AMBROSIO,

Third-Party Defendant/  
Respondent/Cross-  
Appellant.

---

Telephonically argued February 18, 2011  
Decided March 9, 2011

Before Judges Fuentes, Ashrafi and Nugent.

On appeal from Superior Court of New Jersey,  
Law Division, Union County, Docket No.  
L-0254-09.

Michael Blum, appellant/cross-respondent,  
argued the cause pro se (Jennifer M. Blum,  
on the brief).

Edward Grossi argued the cause for  
respondent/cross-appellant (Ambrosio,  
De Pierro & Wernick, LLC, attorneys; Mr.  
Grossi, on the brief).

PER CURIAM

Third-party plaintiff Malcolm Blum appeals from dismissal of his claims against third-party defendant Michael Ambrosio. The third-party complaint alleged legal malpractice by Ambrosio in his role as the expert witness for a party who had unsuccessfully sued Blum for legal malpractice. Ambrosio cross-appeals from an order denying his application for attorney's fees and litigation expenses pursuant to Rule 1:4-8. We affirm on both Blum's appeal and Ambrosio's cross-appeal for the reasons stated in written decisions of Judge William Wertheimer dated December 18, 2009, and January 22, 2010.

The relevant facts are that Blum was sued in 2006 by Yeghoutiel Rabbani for alleged legal malpractice. The law firm of Reilly, Supple & Wischusen defended Blum in that malpractice action. Rabbani engaged the services of Ambrosio as his expert witness, and Ambrosio issued a report. In February 2008, Blum won summary judgment dismissing Rabbani's malpractice complaint.

In January 2009, Reilly, Supple & Wischusen filed this collection action against Blum for unpaid legal fees and expenses of almost \$102,000. Blum, in turn, filed a third-party complaint against Ambrosio, alleging that Ambrosio's opinions in the underlying action "were negligently prepared and constituted malpractice." Ambrosio moved to dismiss the third-party complaint.

In his decision of December 18, 2009, Judge Wertheimer stated the issues: "The questions presented are whether defendant/third party plaintiff has a cause of action for malpractice against an attorney who served as an expert witness for his opponent, and whether [defendant/third party] plaintiff's daughter, an attorney, can provide the affidavit of merit for this case." Concluding that the litigation privilege barred Blum's cause of action against Ambrosio, the court dismissed his third-party complaint with prejudice "for failure to state a cause of action." Having dismissed Blum's claim on that ground, the court made no ruling on the affidavit of merit issue.

Ambrosio then filed a motion for monetary sanctions under Rule 1:4-8, alleging that Blum's third-party complaint was a frivolous pleading. Blum filed a cross-motion requesting that the court reconsider dismissal of his claim. By orders and written decision dated January 22, 2010, the judge denied both motions.

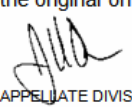
In addition to the litigation privilege, which clearly bars Blum's claim against Ambrosio, see Hawkins v. Harris, 141 N.J. 207, 216 (1995), Ambrosio did not owe a duty to Blum in the underlying litigation. Attorneys may be held to owe a duty to "non-clients when the attorneys know, or should know, that non-

clients will rely on the attorneys' representations and the non-clients are not too remote from the attorneys to be entitled to protection." Petrillo v. Bachenberg, 139 N.J. 472, 483-84 (1995); see also Banco Popular N. Am. v. Gandi, 184 N.J. 161, 181 (2005) ("the invitation to rely and reliance are the linchpins of attorney liability to third parties"). Far from relying on Ambrosio, Blum successfully opposed Ambrosio's opinion in the underlying malpractice case.

With respect to Ambrosio's cross-appeal, the abuse of discretion standard of review applies to the trial judge's decision on a request for sanctions under Rule 1:4-8. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005). Here, the trial court accepted Blum's representation that he had "a reasonable and good faith belief in the possible success of his third party claim." That finding was within the discretionary authority of the trial court, and it supported the court's denial of Ambrosio's application.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION