[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10244
Non-Argument Calendar

D.C. Docket No. 2:14-cv-00476-PAM-MRM

REGIONS BANK,
an Alabama state-chartered bank,

Plaintiff–Counter Defendant–Appellee,

versus

LEGAL OUTSOURCE PA,
a Florida professional association,
PERIWINKLE PARTNERS, LLC,
a Florida limited liability company,
CHARLES PAUL-THOMAS PHOENIX,
individually a.k.a. Charles PT Phoenix,
LISA M. PHOENIX,
individually,

Defendants–Counter Claimants–Appellants.

Appeal from the United States District Court
for the Middle District of Florida

(September 18, 2019)

Before MARCUS, WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

PER CURIAM:

Charles and Lisa Phoenix and their companies, Legal Outsource PA and Periwinkle Partners, LLC, appeal the denial of their motion to vacate a judgment in favor of their commercial mortgagor, Regions Bank, and an award of attorney's fees and costs to Regions. We recently affirmed the underlying judgment against the Phoenixes and their companies. *See Regions Bank v. Legal Outsource PA*, ___ F.3d ___, No. 17-11736 (11th Cir. August 28, 2019). The obligors argue that the failure of Regions to reveal during discovery 212 emails exchanged with legal counsel for which Regions sought attorney's fees warranted vacating the judgment. *See* Fed. R. Civ. P. 60(b)(1), (b)(2), (b)(3). Regions moved for attorney's fees and costs after the district court entered summary judgment in its favor on its claims for breach of promissory notes and guaranties and against the obligors' counterclaims. The district court denied the motion to vacate as "patently frivolous" and awarded Regions $454,222.87 in attorney's fees and $55,434.63 in costs. The Phoenixes later moved for reconsideration of the order granting attorney's fees, which the district court also denied. We affirm.

We review for an abuse of discretion the denial of a motion to vacate a judgment under Federal Rule of Civil Procedure 60(b), *Stansell v. Revolutionary Armed Forces of Colom.*, 771 F.3d 713, 736 (11th Cir. 2014), and an award of

attorney's fees and costs, *Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000) (costs); *Sullivan v. Sch. Bd. of Pinellas County*, 773 F.2d 1182, 1188 (11th Cir. 1985) (attorney's fees). "When employing an abuse-of-discretion standard, we must affirm unless we find that the district court has made a clear error of judgment, or has applied the wrong legal standard." *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc).

The district court did not abuse its discretion when it denied the obligors' motion to vacate because no "suppression" of discoverable evidence occurred. As the district court stated, the emails that Regions identified in its list of fees involved "communications between Regions and its attorneys or among Regions's attorneys." Emails between an attorney and client pertaining to legal advice are ordinarily privileged and not subject to discovery. *See Hickman v. Taylor*, 329 U.S. 495, 510–12 (1947). And the obligors expressly disavowed any intention to seek the attorney-client communications of Regions' counsel. So Regions was not obliged to disclose emails in its privilege log that the obligors never sought in discovery. *See* Fed. R. Civ. P. 26(b)(5) (requiring parties to identify "information [that is] otherwise discoverable . . . [but] is privileged"); *Hickman*, 329 U.S. at 509 ("neither Rule 26 nor any other rule dealing with discovery contemplates production" of "attorney-client communications"). The obligors' argument to the contrary—that they did pursue the emails because they sought all "responsive,

non-privileged documents in [Regions'] possession"—is unconvincing. Because the obligors have failed to point to any discoverable evidence that was suppressed, it follows that Regions' disclosure of the existence of the emails does not amount to the kind of surprise, newly discovered evidence, or misrepresentation or misconduct that warrants vacating the judgment in favor of Regions. *See* Fed. R. Civ. P. 60(b)(1),

The district court also did not abuse its discretion in holding the obligors jointly liable for attorney's fees and costs. Although it is true that Regions did not seek attorney's fees for every count in its complaint, Florida law permits an award of attorney's fees even for other counts when they are inextricably intertwined with counts for which attorney's fees are sought—i.e., the claims involve a "common core" of facts and are based on "related legal theories," and when a determination of issues on one count would necessarily be dispositive of issues raise in another *See Anglia Jacs & Co., Inc. v. Dubin*, 830 So. 2d 169, 172 (Fla. Dist. Ct. App. 2002). Here, the obligors mounted a joint defense with the pleadings filed by the same counsel raising essentially identical claims related to two separate loan obligations, both of which contained a common core of facts. We see no abuse of discretion in treating all the counts of the complaint filed by Regions as inextricably intertwined. As to the obligors' other arguments—including their challenge to the specific calculation of attorney's fees and costs, their position that

the district court *sua sponte* awarded attorney's fees, or their allegations of various other due-process violations related to the award of attorney's fees and costs—they are either forfeited because they are raised for the first time on appeal or are frivolous, and we decline to address them further.

We **AFFIRM** the denial of the motion to vacate judgment, the award of attorney's fees and costs, and the denial of the motion for reconsideration.