NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11504

OASIS CAPITAL, LLC,

Plaintiff-Appellant,

versus

NASON, YEAGER, GERSON, HARRIS & FUMERO, P.A.,
BRIAN S. BERNSTEIN,
Esq.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-81913-AMC

Before BRANCH, BRASHER, and HULL, Circuit Judges.

HULL, Circuit Judge:

This is primarily a legal-malpractice case concerning a lawyer's obligations to his client regarding secured financial

transactions. Oasis Capital, LLC ("Oasis") sued its former lawyer Brian Bernstein and his law firm Nason, Yeager, Gerson, Harris & Fumero, P.A. (collectively, "the defendants") based on diversity jurisdiction. *See* 28 U.S.C. § 1332(a). Oasis's operative complaint alleged Florida-law claims of legal malpractice, breach of contract, and breach of a fiduciary duty. After a five-day trial, a jury returned a verdict in favor of the defendants. Oasis timely appealed.

I. FACTUAL BACKGROUND

Oasis is an investment company that primarily invests in "microcap" companies, or in other words, companies that typically "trade[] under $5 a share," usually with "a market cap of less than $500 million." Oasis hired Bernstein as a lawyer in 2020 to represent it for multiple secured financial transactions, including for transactions conducted in 2021 with a company called Generex Biotechnology Corporation ("Generex").

Specifically, in February and July 2021, with the assistance of Bernstein, Oasis made two loans to Generex in a total principal amount of $2,774,500, with the respective principals plus interest to be paid twelve months from the issue dates. Generex executed two convertible promissory notes for the loans. The promissory notes were "convertible" because Oasis had the option to convert the notes, either in part or in whole, into equity shares of Generex.

The notes' terms expressly (1) created liens and granted Oasis security interests in Generex's assets, and (2) provided Oasis with the right to file UCC-1 financing statements to perfect its security interests in Generex's assets. But, in 2021, neither the

defendants nor Oasis immediately filed the UCC-1 financing statements for the convertible promissory notes.

In January 2022, and through different lawyers, Oasis filed UCC-1 financing statements for the Generex convertible promissory notes.

Eighty-eight days later, on April 23, 2022, other creditors of Generex filed an involuntary petition for bankruptcy against Generex. Oasis's interest in Generex's assets was treated as unsecured in the bankruptcy proceedings because of, *inter alia*, the less-than-ninety-day timing between the initiation of Generex's involuntary bankruptcy proceedings and Oasis's filing of the UCC-1 financing statements for the convertible promissory notes. *See* 11 U.S.C. § 547(b)(4)(A), (e)(2).

The parties stipulated that (1) if Oasis's interest in Generex's assets was treated as secured, Oasis would have been entitled to receive $2.75 million from Generex's bankruptcy estate, but (2) because Oasis's interest in Generex's assets was treated as unsecured, Oasis received only $300,000.

II. PROCEDURAL HISTORY

In its operative complaint, Oasis alleged that the defendants committed legal malpractice, breached contractual obligations, and breached their fiduciary duty by, among other things, failing to file UCC-1 financing statements for the February and July 2021 Generex convertible promissory notes. Oasis asserted that the law firm was liable for Bernstein's conduct under a respondeat-superior theory. Oasis sought over $11 million in monetary damages,

consisting of, as of November 30, 2022, *inter alia*: (1) $1,093,836.30 in principal and $1,381,254.89 in interest on the February 2021 note; (2) $1,085,000 in principal and $652,747.69 in interest on the July 2021 note; and (3) over $6 million in damages, fees, and costs related to the loans.

The parties filed cross-motions for summary judgment, which the district court denied for the most part. As is relevant for this appeal, Oasis argued that the district court should grant Oasis summary judgment as to its malpractice claim because the Florida Supreme Court would likely adopt a rule that a lawyer's failure to file a UCC-1 financing statement for a secured transaction constituted *per se* legal malpractice.[1]

The district court rejected Oasis's argument, concluding that Oasis "provided no authority from the Florida Supreme Court or Florida's intermediary appellate courts suggesting that the Florida Supreme Court would adopt a *per se* malpractice rule." For

[1] Oasis alternatively argued that New York law governed the diversity lawsuit, and that it should be granted summary judgment because under New York law a lawyer's failure to file a UCC-1 financing statement for a secured transaction constituted *per se* legal malpractice. The district court disagreed, concluding that Florida law governed. In this appeal, Oasis does not challenge the district court's choice-of-law determination. *See Calderon v. Sixt Rent a Car, LLC*, 114 F.4th 1190, 1200 (11th Cir. 2024) ("When sitting in diversity," federal courts are "[]bound to apply the substantive law of the forum state."); *Sun Life Assurance Co. of Can. v. Imperial Premium Fin., LLC*, 904 F.3d 1197, 1208 (11th Cir. 2018) (explaining in a diversity case that a party may "waive[] its opportunity to rely on non-forum law").

that reason, the district court declined to adopt such a *per se* rule for an attorney's failure to file a UCC-1 financing statement.

III. JURY TRIAL

During the five-day jury trial, the parties presented (1) conflicting testimony from Bernstein and Adam Long—Oasis's sole managing member—as to whether Long told Bernstein to file or not to file the UCC-1 financing statements for Generex's two convertible promissory notes, and (2) conflicting testimony from expert witnesses about, *inter alia*, whether a lawyer's failure to file a UCC-1 financing statement for a secured transaction was a violation of the professional standard of care for lawyers, regardless of whether the lawyer received express authorization or direction to do so from his client.

For example, the defendants' standard-of-care expert testified that a lawyer could not file a UCC-1 financing statement without his client's express authorization because doing so would publicly reveal the client's confidential information without the client's consent. The expert explained why it would make sense for Oasis to not want to publicly disclose its security interest in Generex's assets. The expert reasoned that the primary goal of the convertible promissory notes was to acquire stock in Generex and sell it at a higher price, but disclosure of a large, secured creditor could depress the stock price.

A CPA expert also testified on behalf of the defendants that Generex was insolvent, would not have been able to survive as a going concern, and "would not have been able to pay the

maximum amount of the notes due." The expert stated that (1) Generex had over $60 million in debts; (2) it had a history of being unable to pay its debts; and (3) its assets generated only $3.35 million in the bankruptcy proceedings, while the creditors' claims were over $85 million.

Once Oasis presented all of its evidence, the district court granted a directed verdict for the defendants, under Federal Rule of Civil Procedure 50, as to Oasis's breach-of-contract claims. The district court ruled that (1) Oasis did not present any evidence of a written contract between it and the defendants as to the UCC-1 financing statements, and (2) Oasis presented insufficient evidence of the essential terms of any alleged oral contract between it and the defendants as to the UCC-1 financing statements.

Further, at the close of all evidence, the district court granted a directed verdict for the defendants limiting the damages Oasis could recover to $2.45 million, *i.e.*, the amount it would have received from Generex's bankruptcy estate if its interest in Generex's assets was treated as secured ($2.75 million) minus the amount Oasis actually received ($300,000). The district court reasoned that Oasis failed to submit any non-speculative evidence that Generex might have avoided bankruptcy, and therefore Oasis failed to prove that it could have recovered any more money from Generex than the $2.75 million it would have received from the bankruptcy estate in the best-case scenario.

The district court also denied Oasis's request to provide the following four proposed jury instructions: (1) "[a] lawyer is

responsible for filing a UCC-1 financing statement to perfect a client's secured loan . . . even if the client did not specifically request that the lawyer file a UCC-1 financing statement;" (2) a lawyer "must obtain the 'informed consent' of his client in writing" if the lawyer "wishes to limit the scope of his representation;" (3) "[a] lawyer may reveal confidential information, to the extent the lawyer reasonably believes necessary to serve the client's interests, unless it is information the client specifically requires not to be disclosed;" and (4) "[a]mbiguity in the terms of representation is construed against the attorney and in favor of the client."

The district court stated that it would not provide the above proposed jury instructions because (1) the first instruction was a matter for the jury to decide based on the conflicting expert testimony; (2) the second and third instructions were based on Florida Bar Rules, which did not create a legal duty and were not evidence of *per se* legal malpractice under Florida law, and it would not be appropriate to selectively present those rules to the jury when there was conflicting expert testimony on the subject; and (3) the fourth instruction would confuse the jury because the breach-of-contract claims were disposed of by directed verdict.

The legal-malpractice and fiduciary-duty claims were submitted to the jury, who had heard dueling testimony on the standard of care and the directions Bernstein received regarding the UCC-1 financing statements. The jury returned a verdict in the defendants' favor. The district court entered final judgment for the defendants. Oasis timely appealed.

IV. APPEAL

A. Issues on Appeal

On appeal, Oasis raises the following arguments:

(1) The district court erred by denying Oasis summary judgment as to its legal-malpractice claim because the Florida Supreme Court would likely adopt the rule that a lawyer's failure to file a UCC-1 financing statement for a secured transaction constitutes *per se* legal malpractice.

(2) The district court abused its discretion by rejecting the four proposed jury instructions described above.

(3) The district court erred by granting a directed verdict for the defendants as to the breach-of-contract claims.

(4) The district court erred by granting a directed verdict for the defendants limiting Oasis's recoverable damages to $2.45 million, the amount it would have received in the bankruptcy proceedings if Generex's debts to Oasis were treated as secured minus what it actually received.

B. Standards of Review

"'We review a district court's decision on summary judgment *de novo*,' viewing the evidence and drawing all inferences in the light most favorable to the non-moving party." *Am. Builders Ins. Co. v. S.-Owners Ins. Co.*, 71 F.4th 847, 854 (11th Cir. 2023) (quoting *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017)).

"We review a district court's refusal to give a requested jury instruction . . . for an abuse of discretion." *Brink v. Direct Gen. Ins. Co.*, 38 F.4th 917, 922 (11th Cir. 2022). However, "[w]e review jury instructions *de novo* to determine whether they misstate the law or mislead the jury." *Teel v. Lozada*, 99 F.4th 1273, 1279 (11th Cir. 2024) (quoting *Caradigm USA LLC v. PruittHealth, Inc.*, 964 F.3d 1259, 1277 n.12 (11th Cir. 2020)).

"We review *de novo* a district judge's granting judgment as a matter of law under Federal Rule of Civil Procedure 50(b) and apply the same standard as the trial judge. In reviewing the record evidence, we draw all inferences in favor of the nonmoving party." *Ruckh v. Salus Rehab., LLC*, 963 F.3d 1089, 1099 (11th Cir. 2020) (quoting *Cadle v. GEICO Gen. Ins. Co.*, 838 F.3d 1113, 1121 (11th Cir. 2016)).

C. Discussion

1. Legal-Malpractice Claim

On appeal, the parties do not now dispute that Florida law applies.[2] It is also clear that Florida courts have not adopted the *per se* legal-malpractice rule for which Oasis advocates. After reviewing the relevant Florida law, we conclude that Oasis has not shown that Florida courts are likely to do so.

Under Florida law, the issue of whether a lawyer violated the standard of care and thus committed legal malpractice is

[2] *See supra* n.1.

ordinarily a factual question for the jury to decide. *See Golden Gate Homes, LC v. Levey*, 59 So. 3d 275, 281 (Fla. 3d DCA 2011) (explaining that "[w]hether [defendant lawyers] neglected a reasonable duty and proximately caused [the client plaintiff's] loss . . . are, at this stage, questions of fact and not law," and reversing dismissal of legal-malpractice claim).

Usually, to prove that his lawyer violated the standard of care and thus committed malpractice, a plaintiff must submit expert testimony. *See Willage v. L. Offs. of Wallace & Breslow, P.A.*, 415 So. 2d 767, 768 (Fla. 3d DCA 1982) (stating that a jury could not determine without expert testimony whether a lawyer's conscious decision not to call a certain witness constituted malpractice). There is an exception to that rule where the attorney's alleged violation of the standard of care is sufficiently "apparent." *See Galloway v. L. Offs. of Merkle, Bright & Sullivan, P.A.*, 596 So. 2d 1205, 1207 (Fla. 4th DCA 1992) (stating that expert testimony was not needed to establish that a law firm breached the standard of care by failing to file a claim within the statute of limitations without justification).

Given these general principles of Florida law, we see no reason that this case would proceed any differently from the ordinary case, just as it did: The parties presented expert testimony about the professional standard of care relating to the filing of UCC-1 financing statements, and the factual question of whether Bernstein violated that standard of care was submitted to the jury. Oasis has not shown that the Florida Supreme Court, when

presented with the facts of this case, would determine that Bernstein's actions constituted *per se* legal malpractice. Therefore, the district court did not err by denying summary judgment to Oasis on its legal-malpractice claim.[3]

2. Jury Instructions

Oasis also has not shown that the district court abused its discretion in declining to give the identified jury instructions. Instead, after record review, we readily conclude that the district court adequately and fully charged the jury.

3. Breach-of-Contract Claims

The directed verdict granted for the defendants on the breach-of-contract claims presents a closer issue. Oasis argues that the district court should have allowed its breach-of-contract claims to go to the jury because it submitted sufficient evidence to support a jury finding of an oral contract with Bernstein and the law firm that included an obligation to file the UCC-1 financing statements. Oasis specifically relies on Long's testimony that he orally instructed Bernstein to file UCC-1 financing statements for the Generex convertible promissory notes, but that Bernstein failed to follow those directions. Oasis also points to a UCC-1 financing statement that the law firm filed for Oasis on May 15, 2020, ten days after the law firm agreed to represent Oasis.

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[3] We deny Oasis's alternative request that we certify the *per se* legal-malpractice question to the Florida Supreme Court.

The Florida Supreme Court has stated: "We think there can be no question that one has a cause of action ex contractu against an attorney who neglects to perform the services which he agrees to perform for a client or which by implication he agrees to perform when he accepts employment by a client." *Weekley v. Knight*, 156 So. 625, 626 (Fla. 1934). Oasis does not dispute that there was no written contract between it and Bernstein, and Oasis did not attempt to introduce a retention agreement or engagement letter between it and the law firm. So at trial Oasis needed to prove that a valid oral contract existed between Long and the defendants for the filing of the UCC-1 financing statements for the Generex notes. Under Florida law, to establish the existence of an oral contract, a plaintiff must show an "offer, acceptance, consideration and sufficient specification of essential terms." *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004).

Here, in this directed-verdict posture, we must accept as true Long's testimony that he instructed Bernstein to file the UCC-1 financing statements at some point during the representation, and that he had an ongoing business relationship with the law firm. *See Ruckh*, 963 F.3d at 1099. Long testified that he (1) "talked about" making the Generex convertible promissory notes secured with Bernstein, (2) "talked about" filing UCC-1 financing statements for the notes with Bernstein, and (3) told Bernstein to file the UCC-1 financing statements for the notes. Long stated that "[i]t was – it was in all – in all situations talked about and understood that it was supposed to be filed, just as it was with all the other lawyers that came before and after him." Long

explained that Oasis had "done probably close to two dozen secured loans" in the past with different lawyers, and those lawyers had filed UCC-1 financing statements for all of those loans. Long also testified that he had "an agreement where [he] would give vastly all [his] business" to the law firm, which "would get paid on all the transactions that closed."

As to the breach-of-contract claim against Bernstein, Long's testimony was insufficient to send the claim to the jury because it did not suggest that Bernstein actually assented to, explicitly or implicitly, Long's instruction to file the UCC-1 financing statements for the Generex notes. Long did not specify when during the representation these discussions occurred or identify any responsive statements or actions by Bernstein that could establish an acceptance of the responsibility to file a UCC-1 financing statement. As for the breach-of-contract claim against the law firm, although Long testified about an ongoing business relationship, Long never testified about the specific terms of his agreement with the law firm. Without this evidence, no jury could find that the filing of a UCC-1 financing statement fell within the scope of the law firm's responsibilities.

Because Oasis presented insufficient evidence for all of the necessary elements of an oral contract formation under Florida law, the district court did not err by granting a directed verdict for the defendants as to the breach-of-contract claims. *See id.*; *see also Combs v. Plantation Patterns*, 106 F.3d 1519, 1526 (11th Cir. 1997) ("[T]he nonmoving party must provide more than a mere

scintilla of evidence to survive a motion for judgment as a matter of law.").

4. Damages

Since Oasis did not prevail at trial, the damages issue is not relevant. Indeed, because we affirm the district court's directed verdict for the defendants on the breach-of-contract claims and the jury's verdict for the defendants on the legal-malpractice and fiduciary-duty claims, this also makes it unnecessary to consider the damages issue on appeal.

V. CONCLUSION

In sum, after careful review, and with the benefit of oral argument, we discern no reversible error in the district court's rulings or the jury's verdict. Accordingly, we affirm the district court's entry of final judgment for the defendants in this case.

AFFIRMED.