

IN THE SUPREME COURT OF OHIO

LORNA B. RATONEL, et al. : CASE NO. 2015-0724  
Appellees, :  
v. : On Appeal from the  
: Montgomery County Court of Appeals  
: Second Appellate District  
ROETZEL & ANDRESS, LPA, et al. :  
Appellants. : Court of Appeals  
: Case No. 26259

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MEMORANDUM OF APPELLEES LORNA B. RATONEL, CARMALOR OHIO, LLC, AND  
CARMALOR, INC., OPPOSING APPELLANTS' MEMORANDUM IN SUPPORT OF  
JURISDICTION

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**EXPLANATION OF WHY THIS COURT DOES NOT HAVE JURISDICTION,  
AND THIS CASE IS NOT A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST**

This appeal derives from an interlocutory order denying a motion for summary judgment. That interlocutory order did not prevent judgment for, or dispose of the merits of the malpractice action against Appellants (hereafter “R&A”). Correspondingly, there is no final appealable order before this Court.<sup>1</sup>

Nevertheless, R&A offer two Propositions of Law which on their face demonstrate this fact-specific case is not one of public or great general interest. With their Proposition of Law I, R&A mischaracterize the state of the record in an effort to lure this Court into believing the appellate court’s decision was predicated upon a mere “scintilla” of evidence. As evidenced by the facts of record set forth below, nothing could be further from the truth. R&A simply disagree with the lower court’s assessment of the extensive Civ. R. 56(C) evidence presented by Appellees. This disagreement is not sufficient to establish jurisdiction in this Court.

Proposition of Law II relies on the same mischaracterization of the factual record. However, R&A alleges for the first time that they “withdrew” from a representation which allegedly “never existed.” But this argument was not, and could not have been raised or developed below due to the actual facts of record.

Additionally, while they made a passing reference to the long-extinct “scintilla” standard, R&A did not bother to explain how the lower court misapplied Ohio law. Nor did R&A articulate how current law in the areas of contract and legal malpractice fails to properly protect attorneys and litigants in the State of Ohio. R&A likewise failed to explain how their proposed

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<sup>1</sup> See Appellees’ *Motion to Dismiss*, the full content of which is incorporated herein and filed contemporaneously herewith.

drastic measures would advance the interests of anyone other than R&A. Consequently, R&A have fallen critically short of demonstrating why firmly-rooted law governing summary judgment, legal malpractice litigation, attorney-client relationships, and basic principles of contract should be re-examined, let alone overturned.

**ARGUMENT IN OPPOSITION TO APPELLANTS' PROPOSITIONS OF LAW**

This appeal involves a case-specific factual dispute between private litigants. Specifically, this appeal arises from a “case-within-the case” scenario in which Appellants, Mark Ropchock, Esq., and Roetzel & Andress, LPA (“R&A”), brought legal malpractice claims against Appellees’ former legal counsel, Gail Pryse, Esq., and Keating, Muething & Klekamp PLL (“KMK”), in connection with Appellees’ (“Ratonel”) \$4,200,000.00 purchase of two commercial properties known as “Holden House” and “French Village.” When KMK was hired, both of these properties received “above-market-rate” rental subsidies from the federal government’s “Section 8” program. As KMK was aware, Ratonel sought the investment security provided by these “above-market” rents, which were paid under 20-year renewable contracts. (Joey Ratonel Depo., p. 129, ll. 17-23.)

KMK handled the drafting of the Purchase Agreements and all due diligence for the Holden House and French Village transactions. When KMK drafted the Holden House contract, they structured the purchase through “conventional financing” from Key Bank. However, KMK removed the option for “conventional financing” from the French Village Purchase Agreement. (Ropchock Depo., p. 116, ll. 8-25; p. 117, ll. 9-22; p. 118, ll. 17-25; p. 119, ll. 1-5, Exhibits 6 and 7 thereto.) The removal of that option caused Ratonel to assume the federally-insured mortgage

at French Village, a loan assumption which triggered the “rent-reduction” and additional mortgage provisions of a federal law known as “MAHRA.”<sup>2</sup>

It is undisputed that as a result of KMK’s legal malpractice in handling the French Village transaction, Ratonel lost their roughly \$1,000,000.00 down payment, together with lost rental income and the incurrence of additional mortgage encumbrances exceeding an additional \$1,000,000.00. (Joey Ratonel Depo., May 29, 2013, p. 128, ll. 5-17, Exhibit O-1 thereto.) However, R&A failed to support the French Village claims with expert testimony, and later, without notifying their clients, omitted the claims from the Amended Complaint filed against KMK. As a result, the French Village claims and their value were extinguished, relegating Ratonel to seek recovery from R&A.

Unable to refute their *per se* malpractice, R&A contrived the issue of “scope of representation,” which is neither the issue or at issue in this case. The reality of R&As’ contrivance is readily exposed by the following undisputed facts of record, all of which controvert R&As’ position that the French Village claims were never referenced or discussed at any point before or after “April 30, 2010.”

As set forth *verbatim* in Ratonels’ briefs below, the uncontroverted facts of record are as follows:

- (1.) R&A represented Ratonel when, on April 22, 2009, R&A advised Ratonel that they would include claims against KMK for KMK’s negligent preparation of the French Village Purchase Agreement. (Pls.’ Reply in Support of MSJ, Aff. of Sam G. Caras, Esq., ¶ 16, Exh. 10 thereto.)
- (2.) R&A represented Ratonel when, on May 13, 2009, R&A included claims in the Complaint against KMK for KMK’s malpractice for failing to properly draft the French Village Purchase Agreement. (Compl., Case No. 2009 CV 03916; Ropchock Depo., p. 394, ll. 10-12.)

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<sup>2</sup> See Pub. L. No. 105-65, Tit. V, 111 Stat. 1384, *et seq.*

- (a.) R&A confirmed by deposition, on April 18, 2013, they represented Ratonel against KMK for malpractice claims referable to the preparation of the French Village Purchase Agreement. (Ropchock Depo., p. 98, ll. 6-22; *Id.* at p. 49, ll. 4-10.)
- (3.) R&A represented Ratonel on October 19, 2009, when R&A advised Ratonel that KMK's statements regarding reduced rents would be "very damning" to KMK when R&A addressed the "French Village issue" during the deposition of KMK attorney Gail Pryse. (Pls.' Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 19, p. 2 of Exh. 13 thereto.)
- (4.) R&A represented Ratonel on January 15, 2010, when R&A deposed KMK attorney Gail Pryse regarding the "issue" of reduced rents at French Village. (Gail Pryse Depo., pp. 187-188; Pls.' Mem. Contra Defs.' MSJ, pp. 13-14.)
- (5.) R&A represented Ratonel on January 26, 2010, when R&A drafted a settlement demand letter for Ratonels' review, which asserted KMK's "clear" and "incomprehensible" malpractice in preparing the French Village Purchase Agreement had caused damages of "\$1,200,000.00." (Pls.' Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 11, pp. 4, 5, and 9 of Exh. 5 thereto; Ropchock Depo., p. 119, ll. 18-25; p. 120, ll. 1-13, pp. 4, 5, and 9 of Exh. 8 thereto.)
- (6.) R&A was negligent *per se* when, on April 30, 2010, R&A rendered erroneous legal advice, unsupported by fact or research, and opined that Ratonels' claims were not viable and that damages were "speculative." (Ropchock Depo., Vol. 1, Exh. 9 thereto.)
- (a.) R&A was negligent *per se* as of April 30, 2010, when they had failed to identify or retain any expert support for Ratonels' claims that KMK had negligently prepared the French Village Purchase Agreement. (*Id.*; Pls.' MSJ; Pls.' Reply in Supp. of MSJ, Aff. of Philip Feldman, Esq.; KMK's MSJ of July 20, 2010, filed in Case No. 2009 CV 03916.)
- (b.) R&A was aware of its malpractice on July 20, 2010, when KMK moved for summary judgment relative to the French Village claims, based on R&A's failures to secure appropriate expert testimony to support those claims. (*Id.*)
- (c.) Consistent with the demand letter of January 26, 2010, and R&As' deposition testimony in this case, in April 2013, R&A admitted KMK's "clear" and "incomprehensible" malpractice in connection with KMK's negligent preparation of the French Village Purchase Agreement. (Pls.' MSJ, pp. 26-27; Ropchock Depo., p. 130, ll. 18-23.)

- (7.) R&A represented Ratonel on June 10, 2010, when R&A moved to amend the Complaint to withdraw and thereby dismiss with prejudice the malpractice claims derived from KMK's negligent drafting of the French Village Purchase Agreement. (Mot. for Leave, filed in Case No. 2009 CV 03916 on June 10, 2010.)
- (8.) R&A represented Ratonel on July 7, 2010, when Ratonel sent an e-mail to R&A about KMK's malpractice in relation to French Village, and asked R&A to "make sure" KMK was held to account for their malpractice. (Pls.' Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 13, pp. 2-3 of Exh. 7 thereto.)
- (9.) R&A represented Ratonel on August 4, 2010, when they amended the Complaint, omitted and thereby dismissed with prejudice the malpractice claims referable to the French Village Purchase Agreement. (Amend. Compl., filed in Case No. 2009 CV 03916 on Aug. 4, 2010; Pls.' MSJ; Pls.' Reply in Supp. of MSJ, Aff. of Philip Feldman, Esq.)
- (10.) Based on R&As' conduct, Ratonel had no reasonable recourse to preserve their claims against KMK for negligent preparation of the French Village Purchase Agreement after R&A dismissed the claims one month before trial. (Ropchock Depo., p. 49, ll. 4-10.)
- (11.) R&As' representation of Ratonel was confirmed on April 19, 2013, when Mr. Ropchock testified that he represented Ratonel in the litigation against KMK, a litigation which included claims for French Village until August 4, 2010. (Ropchock Depo., p. 394, ll. 10-12.)

(See Ratonels' Principal and Reply Briefs to Second District Court of Appeals, "Issues Presented for Review.")

While conspicuously omitted from R&As' Jurisdictional Memorandum, the engagement letter of March 11, 2009, which R&A drafted and Ratonel signed, expressly allowed its terms -- and therefore the scope of R&As' representation -- to be modified/expanded. (Defs.' MSJ, Exh. E thereto, p. 3, ¶ 3.) The engagement letter stated:

**Should you decide to retain our firm for additional services not specified in this letter, we will be pleased to provide such services under such terms as you and we may agree upon.**

(Id.) (Emphasis Added.)

By e-mail on April 22, 2009, R&A offered to expand the scope of their representation to include claims against KMK flowing from the French Village transaction, stating:

From: Ropchock, Mark <MRopchock@ralaw.com>  
Subject: Limited Dividend Issue  
To: "Lorna B. Ratone!" lbratone!350@yahoo.com  
Date: Wednesday, April 22, 2009, 6:15 AM

I take it you never saw the words "Limited Dividend Property" while you were purchasing FV, or if you saw it, you didn't know what it meant. Whose fault do you think it was that wasn't explained to you, Hessel's, KMK or both?

(Id. at Pls.' Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 16, Exh. 10 thereto.)

In response to Mr. Ropchock's inquiry concerning KMK's fault for French Village's status as a "Limited Dividend Property," Appellee Lorna Ratone! replied:

The answer to your question NO I did not see it at all  
Any nobody explained it to me

Buck had a lot of conversation with my previous mgmt team in French village because KMK billed it to French Village so KMK can get paid  
I have alot of emails regarding the problems with French Village  
I need to send it to you to show how they Handled that too  
let me know  
so when KMK call you can add this to our complain  
Thanks Mark

(Id.) (Emphasis Added.)

Following Ms. Ratone!'s request to "add" the "problems" caused by KMK's mishandling of the French Village transaction to the "complain[t]" being prepared by R&A, Mr. Ropchock agreed, and incorporated claims against KMK for negligent drafting of the French Village Purchase Agreement. (Compl. of May 13, 2009, ¶ 33(g); Ropchock Depo., p. 98, ll. 7-22; p. 133, ll. 5-25; p. 134, ll. 1-3.)

As if to erase the reality that R&A in fact sued KMK for malpractice in connection with the French Village transaction, R&A proposed the excuse that the related allegations in the initial Complaint were “brief” and in “passing” (in a notice pleading state). R&A also continues to muddle and conflate the actual timeline of events by referencing selective testimony of Ms. Lorna RatoneL out of temporal context. However, R&A cannot sidestep Ms. RatoneL’s unequivocal testimony that she told Mr. Ropchock he “need[ed] to do French Village and take care of it with this lawsuit with KMK because there’s a lot of problems.” (Lorna RatoneL Depo., p. 49, ll. 1-9.) Ms. RatoneL’s testimony was both accurate, and entirely consistent with her e-mail to R&A on April 22, 2009, when she informed Mr. Ropchock that KMK had caused numerous “problems with French Village,” and asked R&A to “add” claims about those “problems” to the “complain[t]” against KMK. (Pls.’ Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 16, Exh. 10 thereto.) Ms. RatoneL’s testimony was also entirely consistent with Mr. Ropchock’s testimony, to wit:

Q. [Y]ou did include in the original complaint claims against KMK derived from the fact that the purchase agreement that was negotiated, ultimately negotiated and executed, had a provision for limited dividends which limited Lorna’s access to any revenue derived from French Village, and you put claims in there, in your original complaint against KMK, for KMK’s failure to properly advise, counsel, and handle that aspect of the transaction; is that right?

MR. ROPCHOCK: Yes.

(Ropchock Depo., p. 98, ll. 13-22.)

Indeed, Mr. Ropchock left no doubt that he pursued the French Village claims on Ratonels' behalf, testifying:

Q. I've handed you plaintiff's exhibit number 9, and that appears to be an e-mail from you to Lorna dated Friday, April 30, 2010, and it is regarding the French Village claims for legal malpractice; is that correct, sir?

MR. ROPCHOCK: Correct.

Q. Now, there were two issues framed by this letter, first of all the limited dividend issue. [Y]ou included the first issue, the limited dividend issue, as a claim for relief in the initial complaint -- against KMK, right?

MR. ROPCHOCK: Correct.

Q. The second issue you started to discuss with Lorna, and at this point you are offering her reasons not to include the claims for French Village in any amended complaint; is that right?

MR. ROPCHOCK: Sure. Right.

(Ropchock Depo., p. 133, ll. 5-25; p. 134, ll. 1-3.)

Thus, R&As' citations to Lorna Ratonel's deposition testimony take undue license with her understanding as a layperson. They are also controverted by Mr. Ropchock's own testimony, and the abundant prior and subsequent e-mails Ratonel exchanged with R&A, all of which demonstrated Ratonels' understanding and expectation that R&A would pursue the French Village-related claims. For example, Lorna Ratonel testified:

Q. Well your understanding of that lawsuit is it involved your acquisition of the Holden House, did it not?

MS. RATONEL: For both Holden House and French Village. That's why I went to Mark, yes.

(Lorna Ratonel Depo., p. 48, ll. 1-5.)

Notwithstanding R&A's focus on a few lines from Lorna Ratonel's testimony, it was R&A, not Ratonel, who was responsible for the conduct of litigation (e.g., drafting pleadings) against KMK. *Blake v. Ingraham*, 44 Ohio App. 3d 38, 39, 540 N.E. 2d 759, 760 (9th Dist. 1989) ("It is the attorney, and not the client, who, due to his professional education and experience, is in charge of litigation."). Thus, Lorna Ratonel's mistaken recollection of nearly four years later, without any pleading before her, that the French Village claims were not included in the original Complaint does not "demonstrate," much less "unequivocally" demonstrate, that R&A "never agreed" to do exactly what they did -- file a lawsuit including claims derived from KMK's mishandling of the French Village transaction. After all, it is axiomatic that the attorney-client relationship is "based on the conduct of the lawyer[.]" *Cuyahoga Cty. Bar Assn. v. Hardiman*, 100 Ohio St.3d 260, 2003-Ohio-5596, ¶ 10.

**R&A'S DIRECT NEGLIGENCE IS IRREFUTABLE, AND NOT LIMITED BY ANY  
PERSPECTIVES ABOUT THE "SCOPE OF REPRESENTATION," "SCOPE OF  
CONTINGENCY FEE AGREEMENTS," OR "WITHDRAWAL FROM  
REPRESENTATION."**

"An attorney-client relationship includes the representation of a client in court proceedings, advice to a client, and any action on a client's behalf that is connected with the law." *Hamrick v. Union Tp., Ohio*, 79 F.Supp.2d 871, 875, 1999 WL 1282501 (S.D. Ohio 1999), citing *Landis v. Hunt*, 80 Ohio App.3d 662, 669, 610 N.E.2d 554 (10th Dist. 1991); *See also Svaldi v. Holmes*, 986 N.E.2d 443, 2012-Ohio-6161, ¶¶ 23, 26 (10th Dist.).

So regardless of any assertions by R&A that their March 11, 2009, engagement letter cloaks them from liability, R&A in fact provided negligent legal advice to Ratonel that the pending French Village claims against KMK were "speculative" and "without merit." (Pls.' Reply in Supp. of MSJ, Aff. of Philip Feldman, Esq., ¶ 4(d)-(e); Ropchock Depo., pp. 132-133, Exh. 9 thereto.) This erroneous legal advice resulted from R&As' admitted failure to perform

legal research or confer with appropriate experts. (Ropchock Depo., p. 111, ll. 7-24; p. 152, ll.13-25; p. 153, ll. 1-18; p. 164, ll. 15-23; p. 165, ll. 1-5.); *DePugh v. Sladoje*, 111 Ohio App.3d 675, 687, 676 N.E.2d 1231, 1239 (2d Dist.1996) (holding attorneys' unfounded "misperceptions" about viability of claims constituted malpractice *per se*.)

Notably, during his deposition Mr. Ropchock took KMK to task for the same failures to understand and perform research concerning contracts for federally subsidized apartment complexes like French Village. (Ropchock Depo., p. 130, and p. 5, ¶¶ 1, 3 of Exh. 8 thereto.) To this end, Mr. Ropchock endorsed the common sense notion that a lawyer commits malpractice *per se* when he or she advises clients to their potential detriment without performing legal research or any investigation of the underlying facts. (*Id.*) For these very reasons, Mr. Ropchock testified KMK's negligence with respect to French Village was "clear" and "incomprehensible." (Ropchock Depo., p. 130, and p. 5, ¶¶ 1, 3 of Exh. 8 thereto.)

KMK's negligence was incomprehensible because Ratonel purchased French Village for the income stream guaranteed by "above-market-rate" rental subsidies received via the federal government's "Section 8" program. However, when they drafted the Purchase Agreement for French Village, KMK removed the "conventional financing" option from the contract. (Joey Ratonel Depo., p. 130, ll. 6-25; p. 131; p. 132, ll. 1-17.) As a result, after making a down payment of just under \$1,000,000.00, Ratonel assumed the existing federally-insured mortgage at French Village. (Joey Ratonel Depo., May 29, 2013, pp. 128-132, Exhibit O-1 thereto.) KMK then failed to inform Ratonel about the significance of not being able to finance the property via a conventional/private mortgage. (Ropchock Depo., p. 116, ll. 8-21; p. 157, ll. 9-25; p. 158, ll. 1-13, Exhs. 6 and 7 thereto.)

Removing the option for conventional financing is/was significant because a federal law known as “MAHRA”<sup>3</sup> requires “above-market” Section 8 rents to be reduced to “comparable market levels” when properties are financed with federally-insured mortgages, a process known as “Mark-to-Market.”<sup>4</sup> If the Rent Comparability Study required by MAHRA demonstrates the reduced “market-rate” rents cannot service the assumed/primary mortgage, then the government imposes additional mortgages on the property.<sup>5</sup> For property owners such as Ratonel, the result was the loss of their roughly \$1,000,000.00 down payment, coupled with reduced rents and additional mortgage encumbrances exceeding another \$1,000,000.00. (Joey Ratonel Depo., May 29, 2013, pp. 128-132, and Exhibit O-1 thereto.)

The MAHRA Rent Comparability Study for French Village was in fact received and reviewed by R&A in October 2009. (Pls.’ Mem. Contra Defs.’ MSJ, p. 12, Exh. 13 thereto; Pl.’s Repl. in Supp. of MSJ, p. 7, ¶ 2; See also Ropchock Depo., p. 158, ll. 19-23.) The 64-page Study confirmed the certainty of decreased rents (approx. \$760,000.00) and increased mortgage encumbrances at French Village due to KMK’s negligent drafting of the Purchase Agreement. (Id.; Joey Ratonel Depo., p. 129, ll. 17-25; pp. 130-132.) Correspondingly, Mr. Ropchock informed Ratonel that prior e-mails from KMK discussing the financing and rental income aspects of the property transactions would be “very damning” when R&A addressed the “French Village issue” during the deposition of KMK Attorney Gail Pryse. (Pls.’ Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 19, p. 2 of Exh. 13 thereto.)

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<sup>3</sup> See Pub. L. No. 105-65, Tit. V, 111 Stat. 1384, *et seq.*

<sup>4</sup> Pub. L. No. 105-65, Tit. V, § 511(a)(5), 111 Stat. 1386; § 512(1), 111 Stat. 1388; §514(e)(1), 111 Stat. 1393; § 514(g), 111 Stat. 1395; § 524(a)(1); See also 24 C.F.R. §§ 401.410; 24 C.F.R. §§ 401.460; 401.461(a)(1); 401.461(a)(3)(i); 401.461(a)(5)(c).

<sup>5</sup> Id. at n. 3.

That deposition occurred on January 15, 2010, and R&A specifically examined Ms. Pryse about the “issue” of reduced rents at French Village, which “were set to drop by 50 percent.” (Gail Pryse Depo., pp. 187-188; Pls.’ Mem. Contra Defs.’ MSJ, pp. 13-14.) Eleven days later, Mr. Ropchock drafted a “confidential” settlement demand letter addressed to KMK. In that demand letter Mr. Ropchock chastised KMK for their “clear” and “incomprehensible” malpractice, and demanded “\$1,200,000” to settle the French Village claims. (Ropchock Depo., p. 119, ll. 18-25; p. 120, ll. 1-13, pp. 4, 5, and 9 of Exh. 8 thereto.)

Despite bemoaning KMK’s “clear and incomprehensible” malpractice, Mr. Ropchock admitted during deposition that he did not understand “MAHRA,” and failed himself to perform any related legal research. (Ropchock Depo., p. 111, ll. 7-24; p. 152, ll.13-25; p. 153, ll. 1-18; p. 164, ll. 15-23; p. 165, ll. 1-5.) Nevertheless, Mr. Ropchock advised Ratonel their French Village claims were “not viable” because damages were “speculative,” even though they were certain to occur and specific, as confirmed by the Rent Comparability Study and federal law. (Defs.’ MSJ, Exh. E thereto; Ropchock Depo., pp. 133-134,152-153;164-165.) Mr. Ropchock also failed/refused to secure expert support for the French Village claims he included in the initial Complaint of May 13, 2009. (*Id.*) The excuse submitted in R&As’ Jurisdictional Memorandum that Ratonel was responsible, but could not pay for expert support is incorrect; R&A acknowledged it was their responsibility to secure appropriate experts. (Ropchock Depo., p. 148; p. 149, ll. 1-12.)

Thus, Mr. Ropchock’s testimony conclusively establishes the standard of malpractice *per se* applicable to his own conduct. *See DePugh v. Sladoje*, 111 Ohio App.3d 675, 687, 676 N.E.2d 1231, 1239 (2d Dist.1996). Indeed, Mr. Ropchock acknowledged the merit of each point raised by his January 26, 2010, settlement demand to KMK regarding the French Village claims.

(Ropchock Depo., pp. 116-132, 157-158, 163.) Yet on August 4, 2010, R&A compounded their baseless opinions concerning the viability of the French Village claims when they amended the Complaint, omitted the French Village claims, and thereby extinguished the claims with prejudice. This amendment was done without notice to Ratonel, and in complete derogation of the instructions R&A received on July 7, 2010, when Ratonel wrote and beseeched R&A to “make sure” KMK was held accountable for their malpractice at French Village, which, R&A was reminded, had caused Ratonel to “kiss [their] down payment of almost \$1M goodbye.”(Pls.’ Reply in Supp. of MSJ, Aff. of Sam G. Caras, ¶ 13, pp. 2-3 of Exh. 7 thereto.)

As with the negligent/reckless advice to Ratonel regarding the purportedly meritless nature of the French Village claims, it is uncontroverted that R&A conclusively terminated those viable claims, thereby causing Ratonel to suffer damages in excess of \$2,000,000.00. (Joey Ratonel Depo., pp. 128-132, Exh. O-1 thereto.) These acts of irrefutable *per se* malpractice also occurred irrespective of R&As’ “perspectives” about the “scope” of a representation they unquestionably, and admittedly undertook. (Ropchock Depo., p. 98, ll. 13-22; p. 133, ll. 5-25; p. 134, ll. 1-3.)

### CONCLUSION

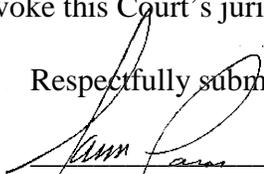
In short, it is beyond cavil that R&A represented Ratonel in connection with the French Village claims. Due to R&As’ conduct however, Ratonel had no reasonable recourse to preserve their French Village claims against KMK. And if R&A sought to “withdraw” from the allegedly non-existent representation for French Village -- as they now claim for the first time -- they were under an obligation not to wait until one month before trial. See Prof. Cond. R. 1.16. But even R&A concedes they never informed Ratonel at any point before trial that they were “inclined to

cease representation,” a fact not lost on the appellate court. (Ropchock Depo., p. 49, ll. 4-10; Entry of Mar. 27, 2015, p. 12, ¶ 28.)

At any rate, even if R&A had communicated a desire to “withdraw” from representation, they were obligated to protect the French Village claims. Prof. Cond. R. 1.7; Prof. Cond. R. 1.16. But R&A did the opposite, and omitted the claims from the Amended Complaint without ever informing Ratonel. As a result, those claims against KMK were extinguished by the “statutory bar” of the limitations period. Consequently, Ratonel could not have pursued the French Village claims “*pro se*” or through “other counsel” -- because R&A effectively destroyed Ratonels’ opportunities to preserve the claims.

In light of the overwhelming and uncontroverted Civ. R. 56(C) evidence demonstrating each element of their malpractice claim, summary judgment should have been rendered in Ratonels’ favor. However, that request must and will be renewed in the trial court, as no final appealable order or other basis exists to invoke this Court’s jurisdiction.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was sent by electronic mail to David C. Greer, Esq., James H. Greer, Esq., and Curtis G. Moore, Esq., counsel for Appellants Roetzel & Andress, LPA and Mark A. Ropchock, Esq., 400 PNC Center, 6 N. Main Street, Dayton, OH 45402-1908, this 5<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Mitchell J. Anderson, Counsel for Appellees