

Circuit Court for Baltimore County  
Case No. 03C16005856

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1245

September Term, 2017

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BRIAN P. NICHOLS

v.

ROBERT P. PRATZ, *et. al.*

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Nazarian,  
Friedman,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: January 18, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On October 23, 2012, Brian Nichols retained the law firm Ward Pratz & Associates, P.A. to bring a federal housing discrimination lawsuit on his behalf. Time passed with no lawsuit filed. Nichols eventually fired Ward Pratz and retained new counsel, which filed the housing suit on his behalf. This portion of the story ended on July 15, 2015, when Judge Richard D. Bennett of the United States District Court for the District of Maryland granted a motion to dismiss Nichols's claim, in part because it was filed outside the relevant statute of limitations.

After losing in federal court, Nichols turned his attention back to Ward Pratz. On June 1, 2016, Nichols sued the firm and its lawyers in the Circuit Court for Baltimore County. Count I of that complaint, captioned "Legal Malpractice," pled that Ward Pratz violated the duty it owed Nichols by failing to adhere to the standards of a reasonably competent lawyer, as demonstrated by not filing the federal suit within the applicable statute of limitations. Count II, captioned "For Money Had and Received but Failed to Perform," pled that Nichols's payment of a \$10,000 flat fee retainer to Ward Pratz created a contract that was breached when the firm failed to file the federal suit within the applicable statute of limitations.

In response, Ward Pratz moved for summary judgment. In a ruling announced from the bench, Judge C. Carey Deeley, Jr. granted Ward Pratz's motion on four separate grounds. *First*, Judge Deeley found that Nichols's claims against Ward Pratz were barred by the statute of limitations. *Second*, Judge Deeley found Ward Pratz could not be liable for failing to bring suit on Nichols's behalf because Judge Bennett had found that there was no merit to Nichols's housing claim. *Third*, Judge Deeley found that Nichols had suffered

no harm because at the time he retained substitute counsel to file his federal suit, the statute of limitations had not yet expired on the housing claim. *Fourth*, Judge Deeley found that Nichols could not adequately support his complaint because he had failed to designate an expert witness. Nichols noted this timely appeal.

### DISCUSSION

In this Court, Nichols challenged only the fourth ground listed above—his failure to designate an expert witness. This means that Nichols has, by operation of law, acquiesced in the three other grounds on which Judge Deeley granted summary judgment. *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 712 (2013) (holding that failure to brief an issue constitutes waiver of the right to appeal from that portion of a court’s order). Thus, Nichols has, by his own actions, adopted Judge Deeley’s determinations that Nichols’s claims against Ward Pratz are barred by the statute of limitations, barred because lack of an original meritorious claim precludes the current action, and barred because Ward Pratz caused Nichols no harm. The fact that Nichols has acquiesced in the trial court’s ruling on these three issues, each of which would resolve the matter, leaves us no reason to reach the sole claim that was appealed.<sup>1</sup> *Id.* (holding that when an argument is waived on appeal, the

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<sup>1</sup> Were we to reach the merits of the issue that Nichols did appeal—his failure to designate an expert witness—we would affirm the trial court’s ruling that Count I of the complaint, captioned “Legal Malpractice,” required testimony of an expert witness. *Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996) (“Expert testimony as to the relevant standard of care is necessary in an attorney malpractice case, except in those cases where the common knowledge or experience of laymen is sufficient to allow the fact finder to infer negligence from the facts.”); JOSEPH F. MURPHY, JR., MARYLAND EVIDENCE HANDBOOK § 1401, 639 (LexisNexis, 4th ed. 2009) (“expert testimony is required in ... most legal malpractice cases”). But we would hold, however, that the trial court erred in finding that Count II, captioned “For Money Had and Received but Failed to Perform” and used here like a

appellate court is “constrained by our procedural rules to affirm the [trial] court’s ruling [on the waived issue] without reaching its merits”). Thus, we affirm the grant of summary judgment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

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breach of contract claim, was also a claim for legal malpractice. A claim of money had and received is an independent common law claim that can be established “whenever the defendant has obtained possession of money which, in equity and good conscience, he ought not to be allowed to retain.” *Benson v. State*, 389 Md. 615, 652-53 (2005) (cleaned up). Such a claim does not automatically require the support of an expert witness.