



1999

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Recommended Citation

Asamoah, Kofi (1999) "Recent Developments: Somuah v. Flachs: A Client Has Cause to Discharge an Attorney When the Client Has Any Good Faith Basis for Being Dissatisfied with the Attorney, Even Though the Attorney Had Performed Competently," *University of Baltimore Law Forum*: Vol. 29 : No. 2 , Article 14.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol29/iss2/14>

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Somuah v. Flachs

A Client has Cause to Discharge an Attorney when the Client has Any Good Faith Basis For Being Dissatisfied with the Attorney, Even though the Attorney had Performed Competently

By Kofi Asamoah

The Court of Appeals of Maryland held that a client may discharge an attorney when the client has a good faith basis for being dissatisfied with the attorney, even when the attorney had performed competently and committed no serious misconduct. *Somuah v. Flachs*, 352 Md. 241, 721 A.2d 680 (1998). The court further held that if this good faith discharge occurs, the attorney could recover for the services rendered prior to being discharged on a quantum meruit theory, however, in contingency fee contracts, the attorney could only recover if and when the contingency generating the fee occurs.

Millicent Somuah (“Somuah”) and her daughter sustained serious injuries in an automobile accident while travelling through Maryland in May 1992. *Id.* at 247, 721 A.2d at 683. Attorney Jeremy Flachs (“Flachs”) visited and interviewed Somuah while she was still recovering in a hospital in Maryland, at which time Somuah retained Flachs to represent her in a personal injury claim on a contingent fee basis. *Id.* After Flachs had spent a considerable amount of time and money to investigate the claim and to collect and preserve evidence, Somuah discharged Flachs in August 1992 after Flachs informed Somuah that he was not licensed to practice law in the State of Maryland. *Id.* at 248, 721 A.2d at 683. Somuah

refused to pay Flachs for the services rendered prior to the discharge. *Id.*

Flachs sued Somuah in the Circuit Court for Prince George’s County to recover reasonable fees for the legal services rendered for Somuah prior to his discharge. *Id.* Following a jury trial, the court entered judgment in favor of Flachs. *Id.* Somuah appealed to the Court of Special Appeals of Maryland, which affirmed, holding that “[Flachs’s] failure to inform [Somuah] that he was not licensed in Maryland did not constitute good cause to discharge [Flachs], so as to preclude his right to immediate compensation for the reasonable value of services rendered prior to [Flachs’s] discharge.” *Id.* at 249, 721 A.2d at 684. The Court of Appeals of Maryland granted certiorari and reversed. *Id.*

Beginning its analysis, the court of appeals rejected the court of special appeals’ conclusion that a client’s right to discharge an attorney was limited to situations where the attorney-client contract was invalid, or when the attorney had violated any of the rules of professional responsibility, a law, or the attorney-client agreement. *Id.* at 250, 721 A.2d at 684. Explaining the broad powers of a client, the court of appeals opined that an “attorney’s authority to act for the client is freely revocable by the client,” even for subjective reasons.

Id. The court noted that the confidential nature of the relationship, coupled with the dangers of friction and loss of confidence, warrants a client’s right for such power to end the relationship when necessary. *Id.* at 251, 721 A.2d at 684. The court reasoned that a client’s power to discharge an attorney is implied in the retainer agreement and therefore a client who discharges an attorney, even without good cause, does not breach the agreement if the discharge was “based on a reasonable subjective dissatisfaction with the attorney’s services.” *Id.* at 251, 721 A.2d at 684-85. The absolute right of a client to discharge an attorney, according to the court, is not altered in any way by a contingent fee contract. *Id.* at 251, 721 A.2d at 685.

Because this was the first time the court addressed what constitutes a proper basis for terminating an attorney-client relationship, the court discussed its prior rulings concerning appropriate circumstances under which an attorney’s compensation may be forfeited and rulings by other jurisdictions that have addressed causes for termination of an attorney-client relationship. *Id.* The court noted that in other jurisdictions almost any good faith reason the client asserted constituted cause for termination, and most courts

permitted recovery on the theory of quantum meruit. *Id.* at 252, 721 A.2d at 685.

The court further reasoned that because the attorney-client relationship is analogous to an employer-employee relationship, a contract to employ an attorney is terminable at will if the client becomes dissatisfied with the services of the attorney. *Id.* at 255, 721 A.2d 687. The court noted that a client who has no basis for being dissatisfied with the attorney's performance, or who has discharged the attorney in bad faith, is deemed to have no just cause for discharge whereas a good faith basis for a client's dissatisfaction is a proper cause for discharge. *Id.* Proof of incompetence, misrepresentation, fraud, deceit, or a violation of the Rules of Professional Conduct are not requirements for discharge, rather any good faith basis for a client's dissatisfaction with the attorney's representation would justify a discharge. *Id.* at 256, 721 A.2d at 687.

The court determined that after the initial contact between Flachs and Somuah, it was reasonable for Somuah to have expected that Flachs could handle any court proceeding. *Id.* at 257, 721 A.2d at 688. Therefore, Flachs' later disclosure that he could not represent Somuah without engaging local counsel provided Somuah with a good faith basis to be dissatisfied with the representation. *Id.*

The court held that if a dissatisfied client discharged an attorney based on a good faith reason, though not serious misconduct

warranting forfeiture of fees, the attorney was entitled to recover compensation for the services rendered prior to the discharge. *Id.* at 258, 721 A.2d 688. Such recovery amount, the court determined, depends on the reasonable value of the benefits the client received and the nature and gravity of the cause of the discharge. *Id.*

The court rejected Somuah's argument that Flachs's failure to inform her that he was not licensed to practice in Maryland constituted an unlawful practice of law and precluded Flachs from recovery. *Id.* at 262, 721 A.2d at 690. The court, instead, determined that Flachs's mere investigation of the personal injury claim, by gathering and preserving evidence in Maryland where he was not licensed, did not constitute an unauthorized practice of law. *Id.* The court concluded that although Flachs was discharged for good cause, the basis for his discharge did not justify the forfeiture of his compensation for the services rendered. *Id.* at 264, 721 A.2d at 691.

The court reasoned that permitting a discharged attorney to recover on a quantum meruit theory prevents unjust enrichment to the client for the services the attorney rendered prior to discharge. *Id.* at 263, 721 A.2d at 691. Furthermore, noted the court, the quantum meruit recovery balances the interest of preserving the right of the client to discharge his attorney without undue restrictions against "the attorney's right to fair compensation for services competently rendered prior to

discharge." *Id.* at 264-265, 721 A.2d at 691.

Among the factors to be considered in determining the reasonable value of the services of a discharged attorney, the court noted that the most salient factor is the extent to which the attorney's services have benefited the client. *Id.* at 265, 721 A.2d at 692. Reiterating its adoption of the "New York Rule," the court emphasized that a client's discharge of an attorney without cause prompts an immediate accrual of the attorney's quantum meruit action, even in contingency fee contracts. *Id.* at 267, 721 A.2d at 693. In *Somuah*, however, the court held that because the client had a good faith basis for being dissatisfied with the attorney coupled with the contingent nature of the fee contract, Flachs's quantum meruit recovery was conditioned upon Somuah's recovery in her personal injury action. *Id.* 267-268, 721 A.2d 693.

The dissent argued that Somuah terminated the attorney-client relationship without a material breach on the part of Flachs, and therefore, the quantum meruit recovery "unconditionally accrued at the time of termination." *Id.* at 276, 721 A.2d at 697 (citing *Skeens v. Miller*, 331 Md. 331, 628 A.2d 185 (1993)). By holding otherwise, the dissent argued, the majority has in effect overruled *Skeens*. *Id.*

In *Somuah v. Flachs*, the court of appeals enunciated a client's "good faith basis" for discharging an attorney, providing an intermediate standard between "good cause" and "without good cause." This, the court

explained, would preserve the client's absolute right to discharge an attorney if the client has a reasonable basis to be dissatisfied with the attorney. The court's distinction between "good cause" and "good faith basis" for discharging an attorney may create some confusion in its application. Trial judges may find it difficult to distinguish a "good faith basis" from a "good cause" for discharge. Based on the evidence in the case, the court could have simply concluded that Somuah discharged Flachs without good cause, and would have arrived at the same result that Flachs could recover his fees on quantum meruit theory.