IN THE COURT OF APPEALS FOR THE STATE OF GEORGIA

GEBO LAW LLC, Appellant, v. BRYAN CAVE LEIGHTON PAISNER, LLP Appellee,	)	Georgia Court of Appeals Case No. A24A1243 (Civil Action File No. 23GR000019 in the State Court of Fulton County)

BRIEF OF APPELLEE

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I. INTRODUCTION

The central issue in the main appeal (Appeal No. A24A1230) and this cross-appeal (No. A24A1243) is whether funds paid by a judgment debtor to a law firm and held in the firm's client trust account to be used to pay ongoing legal fees and expenses as they are incurred are subject to garnishment under Georgia law. The clear answer is that they are not. Cross-Appellant Gebo Law, LLC ("Gebo Law") takes the untenable position that any such funds, whether paid as a retainer or as advance fees, belong to the client until the attorney actually withdraws them from the trust account, making them subject to garnishment from the outset of the representation. Adopting such a position will necessarily prevent judgment debtors from obtaining legal representation in Georgia because any retainers or advance fees they attempt to pay to their lawyers will be subject to garnishment. This Court should not allow Gebo Law to eliminate the right to counsel for judgment debtors in Georgia.

The Georgia garnishment statutes only allow for garnishment of money or property in the hands of a garnishee that belongs to the garnishment defendant. The funds in the client trust account at issue belonged to the law firm Bryan Cave Leighton Paisner LLP ("BCLP") throughout the course of its representation of the judgment debtor Cordial Endeavor Concessions of Atlanta LLC ("Cordial"). Cordial paid the funds to BCLP as a retainer and advance fees for current and future legal

services pursuant to a valid engagement agreement that expressly provided that the funds would be deposited and held in the account until earned by BCLP. Under the clear terms of the engagement agreement, all of the funds in the account belonged to BCLP and were subject to disbursement to BCLP as fees were earned. BCLP had no obligation to return any of the funds unless there were unearned amounts remaining at the conclusion of the representation. To date, the engagement remains ongoing—pending the outcome of this appeal since Cordial will no longer have representation if it loses. The funds in BCLP's trust account did not constitute money or property belonging to Cordial, and thus they were not subject to garnishment by Gebo Law.

In the proceedings below, Gebo Law pursued an aggressive and relentless campaign to attempt to collect on the judgment it had obtained against Cordial. Not content with garnishing Cordial's bank accounts and other entities affiliated with Cordial, Gebo Law brazenly sought to garnish the client trust account held by BCLP as Cordial's counsel. When Gebo Law served BCLP with a Summons and Affidavit of Garnishment on March 22, 2023, the client trust account appeared to have a balance of $175,265—Cordial had paid BCLP a total of $200,000 in advance fees, and BCLP had already incurred and drawn down $24,735 in fees for work performed in January. However, as of the date of service, BCLP had also earned additional legal fees and expenses that it had not yet withdrawn from the account. Moreover, BCLP

continued to incur fees and expenses throughout ***and after*** the 30-day garnishment period. Between the beginning of the engagement on or about January 19, 2023, through the end of the garnishment period on April 20, 2023, BCLP earned a total of $101,449.50 in legal fees and expenses ($24,735 plus an additional $76,714.50). And, BCLP continued to earn fees after April 20, 2023, due to actions by Gebo Law.[1]

BCLP timely served its Answer to Gebo Law's garnishment, correctly stating that it did not hold any of Cordial's money or property that was subject to garnishment. Gebo Law filed a Traverse, and the trial court held a hearing and requested briefing on the issue of whether the funds held by an attorney in a client trust account are subject to garnishment. Six months after the briefs were submitted, and notwithstanding the clear terms of the engagement agreement and applicable Georgia law, the trial court issued an Order finding that a portion of the funds held in BCLP's client trust account and amounts already earned and drawn down by BCLP were subject to garnishment, and directing BCLP to disgorge legal fees it had earned both before and after the garnishment was filed. Specifically, the trial court erroneously found that BCLP was only authorized to hold $50,000 in its client trust account, such that the remaining $125,265 balance as of March 22, 2023 was subject

[1] BCLP earned an additional $63,870.50 in fees between April 21, 2023 and December 21, 2023, the date the trial court issued its Order. BCLP earned another $2,885.50 in fees from the date of the Order to the present. Thus, as of the date of filing this brief, BCLP has earned a total of $168,205.50 in legal fees and expenses throughout the course of its representation of Cordial, which remains ongoing.

to disbursement even though far more than that amount had been earned and drawn by BCLP by the time of the Order. This finding directly contradicted the explicit language agreed to by Cordial and BCLP in the engagement agreement.

As shown in BCLP's main appeal (Appeal No. A24A1230), the trial court committed plain legal error in issuing the Order by finding that funds paid as advance fee payments to a law firm pursuant to an agreement with the client are subject to garnishment, and by directing BCLP to disgorge those funds. For many of the same reasons, Gebo Law's theory in this cross-appeal, that **all** of the funds in the client trust account are subject to garnishment – including the $50,000 that the trial court found BCLP was entitled to keep – is an invalid theory that runs contrary to Georgia law. Adopting Gebo Law's position would be severely detrimental to the attorney-client relationship and a client's right to legal representation. A judgment debtor's right to counsel should not be hindered by the errant conception of attorney compensation embraced by Gebo Law and the trial court below. Gebo Law's cross-appeal lacks merit, and this Court should reject it, reverse the trial court's Order, and direct the return of the full garnished amount to BCLP.

II. STATEMENT OF THE CASE

A. Relevant Material Facts

1. *Cordial Engages BCLP and Pays a Retainer and Advance Fees Pursuant to a Valid Engagement Agreement.*

Cross-Appellant Gebo Law obtained a judgment against Cordial in December 2022. Immediately afterward, Gebo Law began post-judgment discovery efforts directed at Cordial to attempt to collect on the judgment. Cordial engaged BCLP to provide post-judgment legal services, involving post-judgment discovery, settlement negotiations, and potential restructuring or bankruptcy. Cordial and BCLP entered into an engagement agreement setting forth the terms of the representation, which is memorialized in the January 13, 2023 Engagement Letter. V3-663.[2] As set forth therein, BCLP's representation would not commence until BCLP received a $100,000 retainer payment, which both parties agreed was "an advance fee payment and not an estimate of the total fees and costs." V3-665. The Engagement Letter provided that if the account balance was ever equal to or fell below $50,000, Cordial was obligated to restore it to $50,000 within ten days or BCLP could terminate the engagement. V3-665.

The Engagement Letter provided that the initial $100,000 advance fee payment and any other deposits received from Cordial would be placed in BCLP's

[2] Appeals numbers A24A1230 and A24A1243 share the same record.

client trust account. *Id*. Pursuant to the Engagement Letter, Cordial expressly authorized BCLP to hold the funds in its client trust account to be used to pay legal fees and other charges ***as they were incurred (not billed)***. V3-665. As set forth in the Engagement Letter, BCLP's invoices are normally issued on a monthly basis and are due and payable upon receipt. V3-664. Accordingly, the parties agreed that BCLP would reconcile and draw against the funds held in the client trust account to satisfy its monthly statements, which would include costs for attorney's fees and expenses. V3-664-65. The process for drawing down the advance fees on a monthly basis did not, however, change the engagement agreement between Cordial and BCLP which provided that the legal fees were owed and due as incurred, meaning once services were performed and hours were worked, the advance fees were earned regardless of when they were drawn.

The parties clearly anticipated that all of the funds in the client trust account were subject to disbursement to BCLP for legal fees and expenses that were earned throughout the course of the engagement; the Engagement Agreement provided that any funds deposited into the client trust account were "refundable ***to the extent not subject to disbursement***," but "[u]nless otherwise agreed in writing, ***any*** unused deposit will be returned to [Cordial] at the conclusion of this matter." V3-665 (emphasis added). As of the date of this filing, the engagement is ongoing and has

not been terminated or concluded—although it will necessarily conclude if BCLP's appeal fails or if Gebo Law succeeds on its cross-appeal.

Pursuant to the Engagement Letter, and to commence representation, Cordial paid BCLP the initial retainer deposit amount of $100,000 on or about January 19, 2023, which BCLP deposited into its client trust account. V2-179.[3] On February 23, 2023, BCLP issued an invoice for the fees incurred for work performed in January—$24,735—to which the retainer funds were applied, leaving $75,265 remaining in the account. V2-189. As it soon became clear that the post-judgment discovery sought by Gebo Law would be extensive, on March 16, 2023, Cordial sent a cashier's check in the amount of $100,000 to BCLP, requesting that it be deposited into Cordial's retainer account for legal services. V2-194. This payment was made as an additional advance fee payment, pursuant to the terms of the Engagement Letter, and before Gebo Law had commenced any garnishment proceedings against BCLP. V2-413.

2) BCLP Provides Legal Services and Earns Fees and Expenses Before, During, and After the Garnishment Period.

Gebo Law served a Summons and Affidavit of Garnishment on BCLP on March 22, 2023. V2-413. As further set forth in the chart at Figure 1 below, as of the date of service of the summons, BCLP had earned over $63,500 in legal fees and

[3] *See also* Figure 1, p. 9, *infra*.

expenses. Specifically, in addition to the $24,735 reflected in the February invoice, BCLP had earned an additional $9,151 in fees for work performed in February, plus $29,696.75 in fees for work performed March 1st through March 22nd. V2-238, 295. Due to its normal practice of monthly billing and draw downs, however, as of the date of service, BCLP had not yet drawn these additional earned fee amounts—totaling $38,847.75 ($9,151 plus $29,696.75)—against the client trust account.[4] Because the account was reconciled with the invoices on a monthly basis, the balance of the client trust account at any given time did not necessarily reflect all of BCLP's earned amounts as BCLP continued to serve its client's needs, most of which were in response to actions taken by Gebo Law.

Throughout the thirty-day garnishment period following service of the summons, BCLP continued to perform legal services and incur fees and expenses for its work in assisting Cordial with post-judgment discovery and related issues. Accordingly, as of the end date of the garnishment period, April 20, 2023, BCLP had earned an additional $24,866.75 in fees for work performed March 23rd through the 31st, and approximately $13,000 in fees for work performed April 1st through April 20th, for a total of $37,866.75. V2-296, V2-616, V2-607.[5] However, BCLP

[4] For reasons that remain unclear, a March 21, 2023 invoice for fees incurred for work performed in February was not applied against the client trust account until April 10, 2023.

[5] *See also* Figure 1, p. 9, *infra*.

had not yet billed or drawn against the client trust account for the entire amount that it had earned. As of April 20, 2023 – the end date of the garnishment period – BCLP had earned a total of $101,449.50 in legal fees and expenses. BCLP continued to earn fees after the garnishment period ended. As shown in Figure 1 below, BCLP had earned an additional $63,870.50 in fees by the time the trial court issued its Order, and another $2,885.50 in fees earned through the present day. From the beginning of its engagement by Cordial, through the date of this filing, BCLP has earned a total of $168,205.50 in legal fees and expenses.

Figure 1

Date	Transaction	Amount	Advance Fee Balance
01/19/2023	Advance Fee Deposit	$100,000	$100,000
02/23/2023	Earned Fees for Jan. Work	$24,735	$75,265
02/28/2023	Earned Fees for Feb. Work	$9,151	$66,114
03/16/2023	Advance Fee Deposit	$100,000	$166,114
03/22/2023	Earned Fees for Work 03/01 to 03/22	$29,696.75	$136,417.25
03/22/2023	Service of Garnishment Summons		$136,417.25
03/31/2023	Earned Fees for Work 03/23 to 03/31	$24,866.75	$111,550.50
04/20/2023	Earned Fees for Work 04/01 to 04/20	$13,000	$98,550.50
04/20/2023	End of Garnishment Period		$98,550.50
12/20/2023	Earned Fees for Work 04/21 to 12/20	$63,870.50	$34,680
12/21/2023	Court Order Requiring Disbursement	$125,265	$34,680
01/22/2024	Funds Deposited Into Court Registry	$125,265	$34,680[6]
05/21/2024	Earned Fees for Work 12/21 to 05/21/2024	$2,885.50	$31,794.50

[6] When BCLP paid $125,265 into the Court Registry, the client trust account balance was $34,680. This means BCLP was required to disgorge over $90,500 in fees and expenses it had already earned and withdrawn from the account prior to entry of the Order.

B. Relevant Proceedings Below

1. Gebo Law Garnishes BCLP's Client Trust Account.

Cordial paid the $100,000 initial retainer deposit and the $100,000 additional deposit as advance fees pursuant to the terms of the Engagement Letter. V3-664-65. BCLP was expressly authorized to hold these advance fee payments in its client trust account until the fees were earned or expenses incurred, at which time BCLP could withdraw the relevant funds commensurate with its monthly billing cycle to reconcile the account. V3-665. BCLP was not obligated to refund to Cordial unearned amounts, if any, unless and until the engagement was terminated because the monies belonged to BCLP not Cordial. V3-665. The funds deposited and held in the client trust account were BCLP's advance fees, consisting of both (1) earned but not-yet-billed attorney's fees, as well as (2) yet-to-be-earned advance fees for ongoing legal work. Because of these facts, on May 1, 2023, BCLP filed its Garnishee Answer in which it stated that it did not have in its possession from the time of service of the summons (March 22) through the end of the garnishment period (April 20) any money or other property of Cordial that was subject to garnishment. V2-122.

2. Gebo Law Traverses BCLP's Garnishee Answer.

Gebo Law had a copy of the Engagement Letter between Cordial and BCLP and was presumably familiar with its terms, including those set forth above. Gebo

Law was also well aware of its own aggressive and extensive post-judgment discovery efforts that it had undertaken against Cordial, which necessitated Cordial's need for BCLP's legal services in the first place. Nevertheless, on May 17, 2023, Gebo Law filed a Traverse, asserting that BCLP's Garnishee Answer was untrue or legally insufficient. V2-126. Despite recognizing that BCLP had received sums from Cordial "in anticipation of providing legal services" to Cordial, Gebo Law asserted in its Traverse that "[u]pon information and belief, it is not realistic or reasonable for [BCLP] to have incurred legal fees in amounts in excess of the funds paid to [BCLP]." *Id*.

3. The Trial Court Erroneously Orders Disbursement.

The trial court held a hearing on Gebo Law's Traverse on June 7, 2023. After noting that there was little, if any, Georgia authority directly on point and expressing skepticism that the funds in BCLP's client trust account were subject to garnishment, the trial court requested additional briefing on the matter. Approximately six months after the briefs were submitted, the trial court issued an Order on December 21, 2023, erroneously finding that BCLP was only authorized to hold up to $50,000 as a retainer in its client trust account (ignoring the $100,000 deposit required by the Engagement Letter), and ordering that BCLP submit to the registry of the court the $125,265 balance remaining as of March 22, 2023. V2-567-69.

BCLP moved for reconsideration of the Order on January 12, 2024, setting forth the reasons why the trial court should reconsider and hold that none of the funds in the BCLP client trust account are subject to garnishment. V2-586. While the motion for reconsideration was still pending, BCLP deposited $125,265 into the trial court registry and filed its Application for Discretionary Appeal. V3-631. This Court granted the Application on February 14, 2024, and BCLP timely filed a Notice of Appeal in the trial court on February 23, 2024. Gebo Law filed this Cross-Appeal within fifteen days thereafter, pursuant to O.C.G.A. § 5-6-38. BCLP's motion for reconsideration has not been ruled upon due to the granting of the discretionary appeal.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review.

The standard of review in this case is de novo, and the Court owes no deference to the trial court's ruling. *Wells Fargo Bank, N.A. v. Am. Builders & Contractors Supply Co., Inc.*, 365 Ga. App. 555, 556, 879 S.E.2d 662, 664 (2022).

B. Georgia Law Only Permits Garnishment of Funds Belonging to the Defendant And Thus Not Advance Fees Paid to a Lawyer Pursuant to an Engagement Agreement.

The funds paid as advance fees and held in BCLP's client trust account belonged to BCLP, and they were not subject to garnishment by Cordial's creditors. Georgia law is clear that garnishment is in derogation of the common law, and the

garnishment statutes must be strictly construed. *Wachovia Bank of Ga., N.A. v. Unisys Finance Corp.*, 221 Ga. App. 471, 474, 471 S.E.2d 554, 558 (1996). "Garnishment is purely a statutory proceeding and will not be extended so as to reach money or property of the defendant not made subject thereto by statute." *Akridge v. Silva*, 298 Ga. App. 862, 865, 681 S.E.2d 667, 670 (2009) (quotation marks omitted); *see Summer v. Allison*, 127 Ga. App. 217, 227, 193 S.E.2d 177, 185 (1972) ("The courts have no right to enlarge this purely statutory remedy or to hold under it property which is not made subject to the process."). Under the statutes, a garnishment plaintiff is only entitled to garnish money or property of the defendant that is in the hands of the garnishee at the time of service of the garnishment summons, or that comes into the garnishee's hands during the garnishment period. *See* O.C.G.A. § 18-4-4. If a garnishee holds funds in an account that do not belong to the defendant, then the plaintiff has no right to obtain them through garnishment proceedings. *See Akridge*, 298 Ga. App. at 867, 681 S.E.2d at 671; *J. Austin Dillon Co. v. Edwards Shoe Stores, Inc.*, 53 Ga. App. 437, 186 S.E.470, 472 (1936) (garnishment law "is only intended to reach something actually due the defendant and which he could recover himself").

Gebo Law argues that the Georgia garnishment statutes permit garnishment of an attorney trust account, with no exemptions for funds up to a minimum balance. *See* Appellant Br., 12-14. The fundamental flaw in this argument, however, is that it

already presumes that funds deposited into a client trust account always belong to the client until they are earned and withdrawn by the attorney. If that were indeed the case, the argument goes, then of course the garnishment statutes that provide for garnishment of a defendant's property in the hands of a garnishee would serve to subject funds in a client trust account to garnishment. *See id.* at 14.[7] This circular argument ignores the express terms of the Engagement Letter and contradicts clear Georgia authority, which together conclusively demonstrate that the funds deposited and held in BCLP's trust account during its still ongoing representation of Cordial belonged to BCLP. As such, the funds were not subject to garnishment. *See Akridge*, 298 Ga. App. at 867, 681 S.E.2d at 671 ("If the funds in the bank account did not belong to [Cordial], then [Gebo Law] had no right to obtain them through garnishment proceedings."). Gebo Law's position in this cross-appeal would prevent any judgment debtor or debtor subject to garnishment from seeking legal advice because no lawyer would undertake such an engagement if any fees paid in advance were subject to garnishment.

[7] Gebo Law states the unremarkable proposition that "money belonging to a client in the hands of an attorney is subject to garnishment," citing to *Water Processing Co. v. Southern Golf Builders, Inc.*, 248 Ga. 597, 598 (1981). In that case, it was clear that the attorney was holding a client's funds in trust as custodian, as the funds had been recovered for the client as a claimant in bankruptcy and received by the client's attorney in the form of a check payable to the client. *See id.* at 597-98. By contrast, here, Cordial paid BCLP the funds as advance fees and authorized BCLP to hold them in the client trust account until earned. V3-664-65.

C. The Funds Held in the Client Trust Account Were Not Cordial's Funds; They Belonged to BCLP and Thus Are Not Subject to Garnishment.

1. Garnishment of the Funds in the Client Trust Account Violates the Terms of the Engagement Letter.

Georgia garnishment law is not intended to violate existing contracts or restrain the right to contract. *See J. Austin Dillon*, 186 S.E. at 472 (a "garnishee is bound by existing liens, etc., on the property in his hands; and while the garnishment law is to prevent evasions and subterfuges, it does not intend to violate existing contracts or restrain the right to contract."). "Where a fund is in the hands of a garnishee to be advanced under a contract and in pursuance thereof and held for one special purpose only, and where the debtor can not compel its payment to purposes foreign to the contract, the garnishing creditor can not extend his rights beyond those of his debtor." *Kingsberry Mortg. Co. v. Ellis*, 118 Ga. App. 755, 757, 165 S.E.2d 604, 606 (1968); *see Fla. First Nat'l Bank of Jacksonville v. First Nat'l Bank of Columbus*, 154 Ga. App. 211, 213, 267 S.E.2d 849, 851 (1980) ("Thus, the true rule is that a garnishee, if the debtor be indebted to him, has a lien on funds coming into his hands, or future indebtedness to the debtor on his part, superior to that of the plaintiff in garnishment. He is entitled to pay himself before he is required to collect for the benefit of others.") (citations and punctuation omitted). Yet Gebo Law's argument that all of the funds held in BCLP's client trust account were Cordial's

funds that were subject to garnishment directly contradicts and violates the terms of the Engagement Letter.

The terms of the Engagement Letter expressly provide that the funds deposited into the client trust account were unearned fees paid in advance, and that BCLP was authorized to use those amounts to pay fees and other charges as they were incurred. V3-664-65. The Engagement Letter necessarily assumed (and Cordial and BCLP agreed) that **all** of the deposited funds were subject to disbursement to BCLP for its legal fees. V3-665. To the extent any deposited funds ultimately were not earned by BCLP during the course of the engagement, Cordial was entitled to a refund of those funds, but only "at the conclusion of this matter," and not before. *See id.* Anticipating the ongoing nature of legal services and the fees and expenses that would be incurred in the future, the Engagement Letter provided that if the account balance was equal to or fell below $50,000, Cordial would restore the amount to $50,000 within 10 days. *See id.*

2. Garnishment of the Funds in the Client Trust Account Contradicts the Georgia Rules of Professional Conduct and Authority from the State Bar of Georgia.

Rule 1.15(II) of the Georgia Rules of Professional Conduct ("Rule 1.15(II)") provides that "[n]o personal funds shall ever be deposited in a lawyer's trust account, except that unearned attorney's fees may be so held until the same are earned." In other words, unearned attorney's fees are considered to be the ***personal funds of the***

attorney – not the client's funds – and an attorney or law firm is expressly permitted to hold the funds in a client trust account ***until the fees are earned***, at which point the funds may be debited against the client's account. *See id.* The fact that the attorney may draw from the account on a monthly basis, rather than hourly, does nothing to change the fact that the funds belong to the attorney. *See id.* at cmt. 2 ("Nothing in this rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis."). In addition, State Bar of Georgia Formal Advisory Opinion No. 91-2 provides that a prepaid fee, which "is a fee paid by the client with the understanding that the attorney will earn the fee as he or she performs the task agreed upon," "may be placed in a trust account until earned." Formal Adv. Op. 91-2.

After recognizing that Rule 1.15(II) *allows* attorneys to deposit unearned fees into a client trust account, Gebo Law cites to Formal Adv. Op. 91-2 to assert that attorneys are not *required* to do so, absent special circumstances. *See* Appellant Br. at 15. Gebo Law fails to acknowledge, however, that "[s]uch [special] circumstances may be the agreement of the parties . . . ." Formal Adv. Op. 91-2. Those circumstances certainly existed here. Cordial and BCLP expressly agreed in the Engagement Letter that the initial $100,000 advance fee payment and any other

deposits received from Cordial would be placed in BCLP's client trust account and held in the account until they were earned by BCLP. *See* V3-665.

Cordial and BCLP also agreed in the Engagement Letter that all of the funds were subject to disbursement to BCLP, and Cordial was not entitled to a refund unless any unearned amounts remained in the account at the conclusion of the matter. V3-665. This provision comports with Georgia Rule of Professional Conduct 1.16(d), which provides that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fee that has not been earned." *See also* State Bar of Georgia Formal Advisory Opinion No. 03-1 (noting that a "special retainer is a contract for representation obligating a client to pay fees in advance for specified services to be provided by an attorney," and any fees that are earned during the course of the representation of the client need not be refunded to the client when the representation terminates).

As demonstrated herein, the Engagement Letter required BCLP to deposit the initial retainer and any other advance fee payments it received from Cordial in its client trust account, and BCLP was authorized to hold the funds in the account until earned. *See* V3-665; Rule 1.15(II); Formal Adv. Op. 91-2; Formal Adv. Op. 03-1. In addition, while the parties agreed that BCLP would draw against the funds held in the client trust account to satisfy its monthly statements, the Engagement Letter

expressly authorized BCLP to use the funds "to pay fees and other charges as they are incurred." V3-665. BCLP has no obligation to return any of the funds unless there are unearned amounts in the account when the engagement concludes. *Id.* Gebo Law's arguments to the contrary – asserting that the funds in the trust account were client funds "until earned through billing" by BCLP, or that the funds were required to be "earned on receipt" to be considered BCLP's funds – are without merit. *See* Appellant Br. at 15-16. Moreover, it would result in law firms having to bill such files on a daily basis in order to limit the risk of garnishment—assuming that any attorneys would be willing to represent judgment debtors at all under a legal regime that subjected client retainers to garnishment.

D. BCLP Has a Valid Security Interest in the Advance Fees and/or a Right to Setoff Earned Fees.

Gebo Law incorrectly argues that BCLP attempted to create a garnishment exemption that does not exist by arguing that it has a valid security interest in the funds in the client trust account and/or a right of setoff. To the contrary, in its briefing before the trial court and in the main appeal, BCLP argued in the alternative that under Article 9 of the UCC, an attorney that receives a retainer deposit as security for payment of legal fees will typically have a valid security interest in the funds that takes priority over creditors' later attempts to garnish the client's funds. *See* Cassandra Burke Robertson, Jesse Wynn, *Untangling Attorney Retainers From Creditor Claims*, 12 ST. MARY'S J. LEGAL MAL. & ETHICS 142, 144-46, 154-55, 159

(2021) ("Both courts and leading bankruptcy authorities agree that an attorney who holds client funds as security for payment generally has a valid security interest in those funds under Article 9 of the UCC."). As long as the attorney and client agree that the funds will secure payment of legal fees, then "when the client hands over funds to secure payment for the attorney's expected future services, the attorney has a security interest in those funds under Article 9." *Id.* at 157.

Gebo Law's argument ignores the fact that the idea of security is implicit in an agreement (such as the Engagement Agreement here) that provides that the client will pre-pay some or all of the expected cost of the representation, that the funds will be held in trust until the lawyer earns them by performing work, and that the client is obligated to replenish the retainer to maintain a certain baseline of funds in the account. *See id.* at 147-48 (describing this as "[t]he most common type of retainer [that] serves as security for payment"), 162 ("The very purpose of an 'evergreen' retainer, after all, is to offer payment security without requiring pre-payment of the full expected fee."). Gebo Law also incorrectly argues that BCLP "would need to use precise and specific language" to create a security interest, without acknowledging that there is no particular language or "magic words" that need to be used to create a security interest in advance fee payments. *See id.* at 155-56 ("As long as the attorney and the client agree that the retainer secures payment, it does

not matter whether they call it a security interest, and it does not matter whether they intend to invoke the UCC.").

Moreover, Gebo Law's reliance on dicta from *In re Patterson*, No. 07-61961-MHM, 2008 WL 7842101 (Bankr. N.D. Ga. Jan. 15, 2008) to argue that "Georgia does not recognize a security retainer" is misplaced. *In re Patterson* was a bankruptcy decision applying bankruptcy law to determine whether a Chapter 11 bankruptcy attorney was entitled to apply a prepetition retainer amount in partial satisfaction of her fees after the case had been converted to Chapter 7 and the debtor was administratively insolvent. *See id.* at *1-2. The court focused on whether the application to approve the attorney's employment as debtor's attorney clearly characterized the retainer as a security retainer and found that it did not. *Id.* at *2. The case simply has no application to the facts here, where Cordial was not in bankruptcy, BCLP was not engaged as bankruptcy counsel in a pending bankruptcy, and thus the rules and regulations applicable in bankruptcy have no relevance.

E. Case Law and Authorities from Other States Are Inapposite.

In a desperate attempt to avoid the application of Georgia law in this matter, Gebo Law cites to case law and authorities from other states to support its assertion that the trial court correctly held that the funds in BCLP's client trust account are subject to garnishment under Georgia law. These authorities are inapposite.

First, the other states upon which Gebo Law relies have different rules of professional conduct than Georgia. *See, e.g.*, Appellant Br. at 19-21. For example, Gebo Law refers to *Hadassah v. Schwartz*, 197 Ohio App. 3d 94, 97 (2011), in which the court relied on the Ohio Rules of Professional Conduct to find that a client retained ownership rights over a retainer placed in an IOLTA account. *See id.* at 20. The Ohio Rules of Professional Conduct provide that a lawyer must hold property of clients or third persons that is in the lawyer's possession separate from the lawyer's own property. *See* 197 Ohio App. 3d at 97. Further, Ohio Rule of Professional Conduct 1.15(c) provides that "[a] lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." *See id.* By contrast, Rule 1.15(II) of the Georgia Rules of Professional Conduct expressly provides that advance fee payments that are held in a client trust account are the personal funds of the attorney and are therefore not the client's funds. *See id*. None of the professional rules of conduct from the other states that Gebo Law cites contains a similar provision indicating that advance fee payments are the attorney's personal funds, and therefore the persuasive authorities Gebo Law relies upon cannot apply to the facts of the present case because they conflict with Georgia law.

Finally, Gebo Law also completely ignores applicable Georgia law, which provides that even if a garnishee holds money or property belonging to the

defendant, the "setoff of a valid claim is a remedy specifically given by law to garnishees, and the garnishment lien is subject to any claim or right of offset in the garnishee, at the time of the service of the summons of garnishment, or subsequently thereto up to the time for the answer, provided the right in the garnishee was not a result of bad faith on its part." *Fla. First Nat'l Bank*, 154 Ga. App. at 213, 267 S.E.2d at 852 (citations and punctuation omitted). Even accepting for the sake of argument Gebo Law's position that the funds in the trust account were Cordial's funds, which BCLP does not concede, there can be no question that BCLP had a right to offset the entire amount of fees it had earned against the $125,265 ordered by the trial court.

Yet nowhere in its brief does Gebo Law even acknowledge, much less reckon with, the undisputed fact that from the time of service of the garnishment summons through the end of the garnishment period, BCLP earned legal fees and expenses totaling approximately $76,714.50[8] that had not yet been applied against the account. *See* V2-238, 295, 296, 607, 616. For this reason alone, the trial court erred in finding that BCLP was only entitled to retain $50,000 – even though it had earned significantly more than that amount ***both before and after*** the garnishment was

[8] *See* Fig. 1, p. 9, *supra* (showing $9,151 earned for work performed in February, plus $54,563.50 earned for work performed in March, plus $13,000 earned for work performed April 1 through April 20, the end of the garnishment period).

filed.[9] Gebo Law's position that BCLP was required to disburse amounts it had earned for legal fees and expenses already incurred is unsustainable and directly conflicts with BCLP's unquestionable right of setoff.

IV. CONCLUSION

The trial court erred when it found that only $50,000 of the amount held in BCLP's client trust account was not subject to garnishment. In this cross-appeal, Gebo Law seeks to compound that error by asking this Court to find that BCLP was not entitled to retain anything at all. As set forth herein above, the funds that were deposited in BCLP's client trust account were paid as an advance payment of fees, and BCLP was authorized to hold them in the account until they were earned. Because the funds did not constitute money or property belonging to Cordial, they were not subject to garnishment by Gebo Law. BCLP was not obligated to return – and Cordial had no right to refund of – any amounts to Cordial unless there remained unearned amounts in the account when the engagement concluded, and the engagement is still ongoing. For all of the reasons set forth herein, this Court should reject Gebo Law's cross-appeal, find that none of the funds in the client trust account are subject to garnishment, and reverse the trial court's Order.

This submission does not exceed the word count limit imposed by Rule 24.

[9] *See* Fig. 1, p. 9, *supra* (showing that BCLP has earned a total of $168,205.50 ($200,000 advance fees paid, minus current advance fee balance of $31,794.50) during the course of its representation of Cordial).

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IN THE COURT OF APPEALS FOR THE STATE OF GEORGIA

GEBO LAW LLC, Appellant, v. BRYAN CAVE LEIGHTON PAISNER, LLP Appellee,	)	Georgia Court of Appeals Case No. A24A1243 (Civil Action File No. 23GR000019 in the State Court of Fulton County)

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing Brief of Appellee using the Court's E-FAST system. Copies of the filing were also served on the parties listed below by electronic service pursuant to a prior agreement with each of the same to allow documents in a .pdf format sent via email to suffice for service:

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