

FEB 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACK FERM,

Plaintiff - Appellee,

v.

ALFRED T. SAPSE; RENEE SAPSE,

Defendants - Appellants.

No. 07-15861

D.C. No. CV-04-00405-RCJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert E. Jones, District Judge, Presiding

Submitted July 23, 2008**
San Francisco, California

Before: KOZINSKI, Chief Judge, BROWNING and SKOPIL, Circuit Judges.

The district court properly awarded damages to Ferm. Even if Ferm engaged in unauthorized practice of the law, he was entitled to recover the value of his services. “Nevada follows the general rule that contracts made in contravention

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of the law do not create a right of action.” *Loomis v. Lange Fin. Corp.*, 865 P.2d 1161, 1165 (Nev. 1993) (internal quotation and citation omitted). The rule, however, should not apply “[w]here . . . the public cannot be protected because the transaction has been completed, where no serious moral turpitude is involved, where the defendant is the one guilty of the greatest moral fault, and where to apply the rule will be to permit the defendant to be unjustly enriched at the expense of the plaintiff.” *Magill v. Lewis*, 333 P.2d 717, 719 (Nev. 1958). The *Magill* exception is applicable here, because the transaction is complete, Ferm’s actions did not constitute moral turpitude, Sapse defrauded Ferm, and Sapse would otherwise be unjustly enriched by benefitting from Ferm’s service without paying for them.

We decline to reach Ferm’s contention that he should have been awarded additional damages. Ferm did not file a cross-appeal challenging the district court’s decision. *Spurlock v. FBI*, 69 F.3d 1010, 1018 (9th Cir. 1995).

AFFIRMED.