

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Regina Tsoukanaras,

Plaintiff,

v.

Joel J. Levin and Levin & Conde,

Defendants.

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No. 12 L 3813
consolidated with
No. 13 L 5821

MEMORANDUM ORDER AND OPINION

Illinois' fact-pleading requirement extends to each element of a cause of action. The defendants ask this court to impose too demanding of a pleading standard as to the plaintiff's pleading regarding the defendants' alleged breach of duty and proximate causation. Since those elements have been sufficiently pleaded, the defendants' motion must be denied.

Facts

In late December 2008 or early January 2009, Regina Tsoukanaras retained Joel J. Levin, a principal with Levin & Conde, to represent her in dissolution of marriage proceedings. Tsoukanaras alleges that Levin had a duty to represent her with reasonable care and skill. She further alleges that Levin breached his duty by failing to identify and ascertain marital and non-marital assets so that an equitable distribution of marital assets could be made and maintenance and child support determined. Tsoukanaras alleges that Levin's breach of duty resulted in a \$3-million dissipation of marital assets to her detriment.

Tsoukanaras alleges more specifically that Levin breached his duty to her by failing to obtain information in at least three respects. First, she told Levin that her husband may have transferred assets, including money orders, to Greece or hid them. She also told Levin that her husband may have used funds to purchase property in Greece and that he had made those transfers so that she would not receive an equitable share of marital assets. Tsoukanaras retained Blackman Kallick, a forensic accounting firm, to investigate and determine the location and value of the marital assets. Blackman Kallick requested that Levin obtain records from the husband or financial institutions so that the accountants could conduct an investigation and analysis. Levin ignored these requests. Second, Levin failed to obtain information requested by the accountants concerning cash her husband had received from his restaurant business and deposited in a bank or hid. Third, Levin

failed to determine the source of funds for a \$100,000 cashier's check made out to her husband. According to Tsoukanaras, Levin's failure to obtain this information resulted in her not receiving a fair share of marital assets, child support, and maintenance. The information could have resulted in an additional \$3 million in the marital estate prior to dissolution.

Analysis

The defendants bring their motion to dismiss pursuant to Code of Civil Procedure section 2-615. 735 ILCS 5/2-615. A section 2-615 motion to dismiss attacks a complaint's legal sufficiency. *DeHart v. DeHart*, 2013 IL 114137, ¶ 18. Such a motion does not raise affirmative factual defenses, but alleges only defects appearing on the face of the complaint. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484-85 (1994). A section 2-615 motion must identify the complaint's defects and specify the relief sought. 735 ILCS 5/2-615(a).

The defendants' motion to dismiss and Tsoukanaras' first amended complaint intersect the law governing legal malpractice and basic pleading requirements. As to the former, a legal malpractice cause of action requires a plaintiff to allege: (1) an attorney-client relationship establishing an attorney's duty; (2) a negligent act or omission breaching that duty, (3) proximate cause of the injury; and (4) actual damages. *Northern Ill. Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005), citing *Sexton v. Smith*, 112 Ill. 2d 187, 193 (1986). As to the latter, a complaint must be factually sufficient to state a cause of action. To be factually sufficient, a complaint must allege facts, not conclusions, that support a legally recognized cause of action. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). A court considering a section 2-615 motion is to consider only the allegations presented in the pleadings. *Illinois Graphics*, 159 Ill. 2d at 485. All well-pleaded facts and reasonable inferences arising from them must be accepted as true, *Doe v. Chicago Bd. of Ed.*, 213 Ill. 2d 19, 28 (2004), but not conclusions unsupported by facts, *Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The paramount consideration is whether the complaint's allegations construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action for which relief may be granted. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. If not, section 2-615 authorizes the dismissal of a cause of action. *DeHart*, ¶ 18; *Illinois Graphics*, 159 Ill. 2d at 488.

The parties do not dispute that an attorney-client relationship existed. The defendants argue instead that the first amended complaint must be dismissed because it presents conclusions, not facts, as to the elements of breach and proximate causation. The defendants point to four deficiencies. First, the defendants argue that Tsoukanaras fails to allege what documents Levin failed to provide the accountants and how those documents would have uncovered additional assets or resulted in a more favorable outcome. Second, as to Levin's failure to

obtain financial records and develop admissible evidence, the defendants argue that Tsoukanaras fails to identify the evidence and what it would have established. Third, the defendants argue that Tsoukanaras fails to plead facts that a \$100,000 cashier's check in her husband's possession was part of the marital estate. Fourth, the defendants argue that Tsoukanaras fails to and cannot plead facts alleging proximate causation because the marital settlement agreement she executed excludes assets not declared at the time of the agreement.

The first three of the defendants' arguments concern breach. Each of these arguments is wrong for two related reasons. First, the defendants try to prove too much. Their argument that Tsoukanaras fails to identify specific documents Levin should have given to the accountants, what the additional documents would have shown, and proof that the cashier's check was part of the marital estate is a greater burden than required for fact pleading. For purposes of breach, Tsoukanaras alleges that Levin failed to follow up as he should have. Those allegations are not conclusory because they are based on specific requests made of Levin by the accountants or on information Levin should have followed up on. At this point, the fair inference is that the accountants asked Levin for documents that they believed would have established the husband's income and his dissipation of the estate and that he should have followed up on the source of the cashier's check. That is sufficient to plead a breach of duty.

Second, the defendants' argument is disingenuous. To accept that argument would permit the defendants' breach to defeat Tsoukanaras' proximate causation. Put another way, the defendants are arguing that Tsoukanaras has the burden of pleading facts that Levin's breach failed to discover. The defendants may ultimately be proven correct, but at this point in the litigation, the only question is whether Tsoukanaras has pleaded the element of breach. She has.

The defendants' fourth argument as to proximate causation is improperly pleaded. A section 2-615 motion considers only the sufficiency of the complaint's allegations. The defendants' attachment of the marital settlement agreement as exhibit is permissible only in a section 2-619(a)(9) or section 2-1005 motion. The court cannot consider that agreement.

For the reasons expressed above,

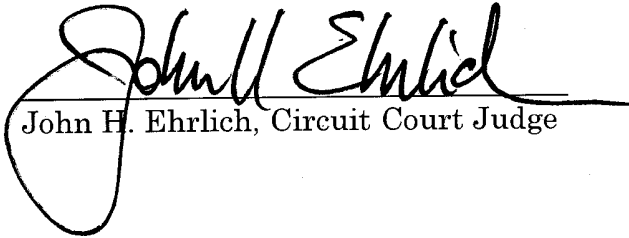
IT IS ORDERED THAT:

1. The defendants' motion to dismiss is denied;
2. The 18 February 2014 case management conference is stricken; and
3. This case is scheduled for a case management conference on 28 February 2014 at 9:00 a.m. in Room 2209.

Judge John H. Ehrlich

FEB 11 2014

Circuit Court 2075


John H. Ehrlich, Circuit Court Judge