IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

CROWN CORK & SEAL CO., INC,	:	DECEMBER TERM 2002
	:	
Plaintiff,	:	No. 03185
	:	
v.	:	Control No. 112002
	:	
MONTGOMERY, McCRACKEN, WALKER & RHODES, LLP,	:	
	:	
Defendant.	:	

CROWN, CORK & SEAL CO., INC.,	:	DECEMBER TERM, 2002
	:	
Plaintiff,	:	No. 03192
	:	
v.	:	
	:	
NINA SEGRE, ESQ., KAREN SENSER, ESQ., and SEGRE & SENSER, P.C.,	:	
	:	
Defendants/Third Party Plaintiffs.	:	

ORDER AND MEMORANDUM

AND NOW, this 25th day of May, 2005, upon consideration of the Motion for Summary Judgment of defendant Montgomery, McCracken, Walker & Rhodes, L.P. ("MMWR") in which the other defendants join, plaintiff's response thereto, the briefs in support and opposition, and all other matters of record, and in accordance with the Memorandum Opinion issued contemporaneously herewith, it is hereby

ORDERED that said Motion is **GRANTED,** and all of plaintiff's remaining claims against defendant MMW&R are **DISMISSED**.

BY THE COURT:

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C. DARNELL JONES, II, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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CROWN CORK & SEAL CO., INC, Plaintiff, v. MONTGOMERY, McCRACKEN, WALKER & RHODES, LLP, Defendant.	: : : : : : : : : :	DECEMBER TERM 2002 No. 03185 Control No. 112002

CROWN, CORK & SEAL CO., INC., Plaintiff, v. NINA SEGRE, ESQ., KAREN SENSER, ESQ., and SEGRE & SENSER, P.C., Defendants/Third Party Plaintiffs.	: : : : : : : : : :	DECEMBER TERM, 2002 No. 03192

MEMORANDUM OPINION

Plaintiff Crown, Cork & Seal ("CC&S") brought this action for professional malpractice against defendant Montgomery, McCracken, Walker & Rhodes, LLP ("MMWR") based on the fact that CC&S' counsel, Nina Segre, Esquire and Karen Senser, Esquire (and their law firm, Segre & Senser, P.C. ("S&S")) committed malpractice against CC&S and then joined MMW&R as partners.

Although the allegedly improper advice that S&S gave to CC&S occurred prior to Segre and Senser joining MMW&R, CC&S claims that MMW&R is liable for that malpractice as successor-in-interest to S&S and that MMW&R breached its fiduciary duty to CC&S by failing

to notify CC&S of S&S' alleged malpractice when MMW&R because aware of it during the pendency of certain California litigation that was related to S&S' alleged malpractice. MMW&R has moved for summary judgment on all of CC&S' claims against it.[1]

I. CC&S' Has Failed to Proffer Sufficient Evidence To Support Its Claims That MMW&R Is Liable As Successor In Interest to S&S.

In order to survive summary judgment of its claims that MMW&R is liable as successor-in-interest to S&S, CCS must show that, in addition to acquiring the assets of S&S:

1) MMW&R expressly or impliedly assumed S&S' liabilities;

2) the transaction between MMW&R and S&S amounted to a consolidation or merger;

3) MMW&R is merely a continuation of S&S;

4) the transaction was fraudulently entered into to escape liability; or

5) the transfer of S&S' assets to MMW&R was not made for adequate consideration and provisions were not made for the creditors of S&S.

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[1] Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether to grant summary judgment, a trial court must resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law.

Horne v. Haladay, 728 A.2d 954, 955 (Pa. Super. 1999). When confronted with a motion for summary judgment,

> [t]he adverse party may not rest upon the mere allegations or denials of his pleading, but must file a response . . . identifying (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa. R. Civ. P. 1035.3.

Sehl v. Vista Linen Rental Serv., Inc., 763 A.2d 858, 863-4 (Pa. Super. 2001). CC&S has failed to offer evidence[2] that any of these scenarios exists here, so its claims against MMW&R based on successor liability will be dismissed.

II. CC&S Has Failed to Proffer Sufficient Evidence of Its Claim For Breach of Fiduciary Duty Against MMW&R and S&S.

CC&S alleges that at some time in the Summer or Fall of 2001, MMW&R and Segre and Senser became aware that S&S committed malpractice in drafting the lease and that MMW&R failed to inform CC&S that S&S had committed malpractice. CC&S further alleges that such failure to inform CC&S was a breach of MMW&R's fiduciary duty to CC&S. However, the evidence produced by CC&S to prove these allegations does not show that MMW&R and Segre and Senser had concluded that S&S committed malpractice. Instead, the evidence shows that they simply dealt in an appropriate manner with the suggestion of malpractice made by Universal at Senser's deposition.

Before Senser was deposed in the California Action, she had discussions with two MMW&R attorneys, who were knowledgeable regarding professional liability issues. *See* CC&S Appendix, Vol. I(a), Ex. D, pp. 118-126. After Senser's deposition, she and/or Segre allegedly asked CC&S' California counsel if CC&S was considering suing S&S for malpractice, and he allegedly said no. *See id.*, Vol. II, Ex. 25. As a result, either Senser and/or Segre drafted a memorandum to MMW&R's internal files which stated that the suggestion of malpractice made by the Universal's counsel during the deposition had not evolved into an actual accusation of malpractice by CC&S. *See id.* Later, upon receiving a copy of the deposition transcript setting forth the adversary's suggestion of malpractice, Senser put S&S' malpractice

[2] The two references to S&S having merged into MMWR, which were made of Senser's deposition, are not sufficient evidence to prove that a legal merger took place, particularly since such references were made by Universal's counsel. *See* CC&S Appendix, Vol. I(a), Ex. A., p. 24; Ex. C, p. 718.

carrier on notice of the suggestion. *See id.* Ex. 24. In addition, MMW&R, when renewing its malpractice insurance, notified its carrier that S&S had put its carrier on notice of the suggestion of malpractice. *See id.*

None of these actions or documents constitute an admission by MMW&R that S&S did in fact commit malpractice, nor does this evidence show that Segre and Senser believed they had committed malpractice and withheld that information from CC&S. Without other evidence, the court refuses to read into these rather benign activities and documents the evil motive that CC&S accuses MMW&R and Segre and Senser of harboring.[3]

MMW&R had no fiduciary duty to give CC&S copies of the MMW&R's internal memorandum, nor of the notices sent to S&S' and MMW&R's malpractice carriers, because CC&S was already aware of the information contained therein, namely that CC&S' adversary had made a suggestion that S&S' committed malpractice against CC&S. In fact, CC&S, through its local trial counsel, Mr. Wilkenson, became aware of CC&S' adversary's suggestion of malpractice at the same time that MMW&R and Segre and Senser became aware of it, i.e. when it was made at Senser's deposition. Since the client was already aware of it, MMW&R and Segre and Senser had no fiduciary duty to inform their client of it.[4] Therefore, CC&S' claim for fiduciary duty against MMW&R will be dismissed. Furthermore, since CC&S has failed to prove that MMW&R committed any wrongs towards it, CC&S' requests for equitable disgorgement of fees and for punitive damages will also be dismissed.

[3] CC&S also offers the expert testimony of Professor Wolfram "that the Defendants breached standards of care in failing to disclose the defective nature of their legal services, [but CC&S] does not necessarily agree that expert testimony is required to establish a breach of a standards of care in such a case." CC&S' Response to Motion for Summary Judgment, p. 16, n. 7. CC&S is correct that expert testimony is unnecessary here, which is why the court does not rely upon the opinions of either Professor Wolfram or MMWR's expert in concluding that summary judgment is appropriate in this instance.

[4] Similarly, Segre and Senser, who joined in MMW&R's Motion, cannot be liable for breach of fiduciary duty arising out of these acts.

CONCLUSION

For all of the foregoing reasons, MMW&R's Motion for Summary Judgment is granted and the claims against it are dismissed.

BY THE COURT:

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C. DARNELL JONES, II, J.