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

LEM 2Q, LLC *et al.*	:	July Term, 2010
Plaintiffs	:	Case No. 01398
v.	:	Commerce Program
GUARANTY NATIONAL TITLE COMPANY *et al.*	:	Control Nos. 11013043, 11020126, 11012365.
Defendants	:	

ORDER

AND NOW, this 25th day of April, 2013, upon consideration of the preliminary objections of defendants Guaranty Title Company *et al.*, Fidelity National Title Insurance Company and Joseph P. Cacciatore, the responses in opposition of plaintiffs and the respective memoranda of law, it is **ORDERED** that the preliminary objections are **SUSTAINED-IN-PART** and **OVERRULED-IN-PART**. The preliminary objections of individual defendants Robert J. Voegel and Robert R. Rothstein are **SUSTAINED** as to the claim of attorney malpractice asserted in Count VI of the amended complaint, and that claim is **DISMISSED**. All other preliminary objections are **OVERRULED**.

BY THE COURT,

MCINERNEY, J.

Lem2q, Llc Etal Vs Vogel Etal-ORDOP

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MEMORANDUM OPINION

In the amended complaint, plaintiffs aver that defendant Guaranty National Title Company ("Guaranty National,") "was retained [by plaintiffs] as their closing and escrow agent" in connection with a real estate investment.[1] Plaintiffs also aver that individual defendants Robert J. Voegel ("Voegel") and Robert R. Rothstein ("Rothstein,") were "counsel ... of Guaranty Title" at the time plaintiffs made their investment.[2] In Count VI of the amended complaint, plaintiffs assert the claim of attorney malpractice against Voegel and Rothstein. Specifically, plaintiffs aver that Voegel and Rothstein, while acting as counsel of Guaranty National, failed to disclose that they had a conflict of interest in the same real estate transaction in which plaintiffs made their investment.[3] Plaintiffs conclude that the failure of Voegel and Rothstein to disclose their conflict of interest amounted to attorney malpractice which ultimately resulted in damages suffered by plaintiffs.[4]

[1] Amended Complaint, ¶ 11.
[2] Id. at ¶ 8.
[3] Id. at ¶ 133.
[4] Id. at ¶¶ 145—148.

The law on attorney malpractice is settled:

> Our Supreme Court retained **privity** (an attorney-client or analogous professional relationship, or a specific undertaking) **as an element of proof necessary to maintain an action in negligence for professional malpractice. The only exception being a narrow class of third party beneficiaries under Restatement (Second) of Contracts § 302 where the intent to benefit is clear and the promisee (testator) is unable to enforce the contract.**[5]

In this case, the amended complaint neither avers the existence of privity between plaintiffs and Voegel and Rothstein, nor that plaintiffs are third party beneficiaries of an agreement entered into by Voegel, Rothstein and National Guaranty. Instead, the amended complaint merely states that Voegel and Rothstein were "counsel" of defendant Guaranty Title.[6] The amended complaint fails to allege a necessary element to prove attorney malpractice. Plaintiffs may not maintain the claim of attorney malpractice and Count VI of the amended complaint is dismissed.

By The Court,

McInerney, J.

[5] Sabella v. Milides, 2010 Pa. Super 48, P12; 992 A.2d 180, 187 (Pa. Super. 2010) (emphasis supplied).
[6] "The Court must determine whether it is clear and free from doubt, from all the facts pleaded, that the [party asserting a claim] will be unable to state a cause of action.... This raises questions of law.... On preliminary objections, all material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true...." Commonwealth v. Locust Twp., 600 Pa. 533, 542; 968 A.2d 1263 1269 (Pa. 2009).