

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

_____	:	DECEMBER TERM, 2011
DONNA SANNUTI, ET AL.	:	
	:	NO. 00965
Plaintiffs	:	
	:	COMMERCE PROGRAM
v.	:	
	:	CONTROL NO. 13090308
RICHMAN, BERENBAUM &	:	
ASSOCIATES, P.C., ET AL.	:	
	:	
Defendants	:	
_____	:	

ORDER

AND NOW, this *18<sup>th</sup>* day of November, 2013, upon

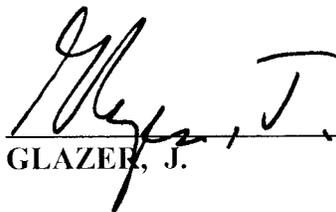
consideration of defendants, Jacob N. Snyder, Esquire and Richman, Berenbaum & Associates, motion for summary judgment, it is hereby

ORDERED

that said motion is GRANTED.

DOCKETED  
NOV 19 2013  
G. HART  
CIVIL ADMINISTRATION

BY THE COURT:

  
\_\_\_\_\_  
GLAZER, J.

Sannuti Etal Vs Snyder -ORDOP



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<b>v.</b>	:	
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<b>RICHMAN, BERENBAUM &amp; ASSOCIATES, P.C., ET AL.</b>	:	
	:	
<b>Defendants</b>	:	
_____	:	

**OPINION**

GLAZER, J.

November 18, 2013

**PROCEDURAL AND FACTUAL HISTORY**

Plaintiffs, Donna Sannuti and Michael Sannuti (“Donna Sannuti”), h/w, Integrity Construction Concepts, Inc., (“Integrity”), and M. Sannuti Development (“MSD”) (collectively the “Sannutis”), commenced the current action against defendants, Jacob N. Snyder, Esquire (“Snyder”) and Richman, Berenbaum & Associates, Inc. (“RBA”), alleging claims for: (1) negligence and (2) breach of contract. Defendants bring the instant motion for summary judgment. For the reasons detailed below, the motion is granted.

The Sannutis are asserting its claims based upon defendants’ conduct while representing the Sannutis in the case of Dominic Capponi (“Capponi”) v. Sannutis (hereinafter referred to as the “underlying action”). In 1994, Capponi and Sannutis entered into a partnership and established Integrity, each owning an equal share, for the purpose of purchasing and developing real estate. Capponi subsequently filed an action against the Sannutis for claims including breach of contract, quantum meruit, and unjust enrichment. Capponi alleged the Sannutis denied

him accounting records and Capponi's share in the profits in addition to reimbursement of his costs. In 2002, the Honorable Gene D. Cohen held a bench trial in which the Sannutis were represented by A. Charles Peruto, Sr., Esquire. During the trial, Judge Cohen directed that the Sannutis produce a general ledger for the partnership and other documents that could establish how profitable the partnership was. See Defendants Motion for Summary Judgment, ¶20. The Sannutis failed to do so, and as a result the court issued a sanction that prohibited the Sannutis from "offering any defense of unprofitability with regard to the partnership." Id. at ¶15.

Ultimately, Judge Cohen held in favor of Capponi in the amount of \$344,880.41, including interest. Id. at ¶22. The parties appealed to the Superior Court, and upon the Superior Court's request, Judge Cohen provided a supplemental opinion detailing his calculation of damages. Judge Cohen noted an error in his original calculations of damages, and adjusted it accordingly. While the Superior Court upheld Judge Cohen's rulings on liability and which construction projects were partnership projects, the court determined Judge Cohen had made another error in his recalculations. Id. at ¶27-28. In 2005, the case was remanded to the trial court for a re-trial strictly on damages.

In October 2008, The Sannutis retained defendants as counsel, and in 2009 the re-trial on damages was brought before the Honorable Ricardo C. Jackson. The parties agreed that the court would decide the case based on the record from the initial trial and briefs submitted in support of the parties' positions. Id. at ¶32. The Sannutis were ordered to file their brief no later than June 20, 2009. See Plaintiffs' Complaint at ¶18. Along with the order, Judge Jackson also upheld the discovery sanctions precluding the Sannutis from offering evidence of unprofitability. Defendants Motion for Summary Judgment at ¶33. By July 1, the Sannutis--represented by defendants--had yet to file a brief with the court, and therefore Judge Jackson held in favor of

Capponi and against the Sannutis for damages equaling \$328,757.15. Plaintiffs' Complaint at ¶19-21, Exhibit D. Judge Jackson then vacated the July 1, 2009 order a week later to give the parties and opportunity to settle the case, but they ultimately failed to reach an agreement. On September 30, 2009 judgment was entered in favor of Capponi for \$193,957 plus \$142,706.41 in interest, for a total of \$336,663.14. Plaintiffs' Complaint, Exhibit F. The Sannutis filed a post-trial motion for relief, but it was denied on October 30, 2009. Judge Jackson adopted Judge Cohen's original findings of fact and the calculations of damages set forth by Capponi's expert in his trial brief. Defendants Motion for Summary Judgment at ¶47-48. The order explained, "as Defendants did not file a brief for consideration, despite the agreement that both parties do so in order to decide the issue, the only facts available were those enumerated in Plaintiff's brief." Plaintiffs' Complaint, Exhibit G. Final judgment was entered on January 26, 2010 in favor of Capponi for \$336,663.14. Defendants Motion for Summary Judgment at ¶51. Finally, on July 12, 2011, the Superior Court affirmed Judge Jackson's ruling.

In the current action against Snyder and RBA, the Sannutis allege the defendants committed legal malpractice when they failed to act in accordance with Judge Jackson's order to file its brief on damages by June 20, 2009. Defendants now bring the current motion for summary judgment alleging that plaintiffs bear the burden of proof to establish each element in its cause of action but have failed to provide evidence on the element of damages, thereby warranting summary judgment. Additionally, defendants correctly note that plaintiffs failed to properly oppose defendant's motion for summary judgment; plaintiffs filed a memorandum but not an official response to the averments specified in defendants' motion. See Reply Brief in Further Support of Defendant's Motion for Summary Judgment, pp. 1. While plaintiffs' glaring

omission is a sufficient reason on its own to grant defendants' motion, this court considered the matter on its merits.

## **DISCUSSION**

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Boring v. Erie Insurance Group, 641 A.2d 1189, 1190 (Pa. Super. 1994) (quoting Pa.R.C.P. 1035 (b)). "In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." Fine v. Checcio, 582 Pa. 253, 265, 870 A.2d 850, 857 (2005). Summary judgment may be granted only when the judgment is "clear and free from doubt." Checcio, 582 Pa. at 253 (2005) (citing Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (1991)).

Pa.R.C.P.No. 1035.2 states that a party may move for summary judgment "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Furthermore, the notes to the rule clarify that, "[u]nder subparagraph (2), the record contains insufficient evidence of facts to make out a prima facie cause of action or defense and, therefore, there is no issue to be submitted to a jury.... To defeat this motion, the adverse party must come forth with evidence showing the existence of the facts essential to the cause of action or defense." Id.

A plaintiff must establish the following elements in a legal malpractice case: (1) the employment of the attorney; (2) the attorney's failure to exercise ordinary skills and knowledge; and (3) the attorney's negligence was the proximate cause of the damage to the plaintiff. Kituskie v. Corbman, 552 Pa. 275, 281, 714 A.2d 1027, 1029 (1998). Proof of actual loss is an essential element. Id. The focus on damages is whether one can identify its existence with certainty, rather than the precise manner of calculation. Id. However, if there is uncertainty, the damages are deemed remote or speculative. Id. This puts the burden on the plaintiff to show that "but for" the attorney's negligence, the plaintiff would not have suffered harm. See Duke and Co. v. Anderson, 275 Pa. Super. 65, 74, 418 A.2d 613, 618 (1980). In the current action, the parties do not dispute the existence of an attorney-client relationship, or the defendant's failure to file the brief in the underlying action. Therefore, the heart of plaintiffs' claims--legal malpractice and breach of contract--are grounded in whether plaintiff can prove actual damages.

Defendants' failure to timely submit its brief on damages in the underlying action prevented the Sannutis from making arguments on the calculation of damages. However, it is unknown how the never-filed brief would have influenced Judge Jackson's calculation of damages, particularly because the Sannutis were prohibited from introducing evidence regarding the defense of unprofitability. Since proof of actual loss is an element, plaintiffs need to support its claim of damages with concrete evidence. Even if the never-file brief would have attacked the credibility of Capponi's experts' opinions, that alone does not establish that plaintiffs have suffered actual harm. Moreover, plaintiffs' argument that it might have received more lenient discovery sanctions if the brief was filed fails to prove actual damages as well. The Sannutis provided an expert opinion stating that defendants deviated from the standard of care, but it lacks crucial analysis. See Plaintiffs' Complaint, Exhibit J. The opinion does not demonstrate that if

defendants had filed their brief in a timely fashion, then Judge Jackson would have altered his calculation of damages. Plaintiffs attempted to meet its burden by asserting “what ifs,” instead of adducing real evidence.

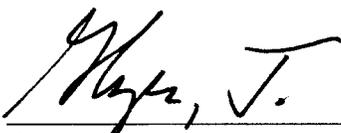
Lastly, plaintiffs’ assertion that certain amounts of money should have been credited to Capponi is unpersuasive. Plaintiff attempts to create a genuine issue of fact by disputing whether Capponi was credited with \$100,000, and should have been credited with \$193,000. Plaintiffs Memorandum of Law in Response to Defendant’s Motion for Summary Judgment at p. 5. First, Judge Jackson credited Capponi with \$100,000 in his calculations. See Defendants’ Motion for Summary Judgment, Exhibit I p. 4-5. Second, plaintiffs once again fail to provide evidence establishing that Judge Jackson would have altered his calculations if the defendants would have challenged the \$193,000 in its never-filed brief.

Defendants’ inadequate representation might have affected Judge Jackson’s calculation of damages, but plaintiffs failed to meet their burden. Because the question remains whether damages even exist, rather than how much, this court renders the alleged damages to be speculative, barring relief.

**CONCLUSION**

Based on the foregoing, Snyder and RBA are dismissed from the case. Further, the motion for summary judgment is granted.

**BY THE COURT:**

  
\_\_\_\_\_  
GLAZER, J.