

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

MWSPA, Inc. and	:	June Term, 2005
Michael S. Williams	:	
	:	
<i>Plaintiffs</i>	:	
v.	:	No. 973
	:	
Dan M. Achek and	:	
Achek Design and Construction, Co. Inc.	:	Motion Control Nos. 100868, 100869
	:	and 100870.
<i>Defendants</i>	:	

ORDER

AND NOW, this 23RD day of March 2007, upon consideration of the motion for summary judgment on counts I-V of the Complaint by Plaintiffs MSWPA, Inc. and Michael S. Williams (No. 100869), the motion for partial summary judgment by Defendants Dan M. Achek and Achek Design and Construction Co., Inc. (No. 100868), the motion for summary judgment on the Defendants' Counterclaims by Plaintiffs MSWPA, Inc. and Michael S. Williams (No. 100870), the memoranda of law in support and opposition, and all other matters of record, it is **ORDERED** that:

1. the Architectural Services Agreement and the Bar Construction Agreement are void and counts I, II, IV, V and VI of the Complaint, and the First Counterclaim, are **DISMISSED**;

2. Defendants Dan M. Achek and Achek Design and Construction Co. Inc.'s motion for partial summary judgment is granted in part and denied in part, and count VII of the Complaint is **DISMISSED**.

BY THE COURT

HOWLAND W. ABRAMSON, J.

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	:	and 100870.
<i>Defendants</i>	:	

OPINION

Plaintiffs Michael S. Williams and MSWPA, Inc. move for summary judgment on Counts I-V of the Complaint, and move to dismiss all counts in the Counterclaim. Defendants Dan M. Achek and Achek Design and Construction Co., Inc. move to dismiss Counts III and VII of the Complaint, and all claims asserted against Dan M. Achek in his individual capacity. The question for the court is whether two agreements executed by the parties are illegal and void. The court holds that the two agreements are illegal and void, and grants in part and denies in part the motions for summary judgment.

BACKGROUND

Plaintiff MSWPA, Inc. (MSWPA) and Defendant Achek Design and Construction Co. Inc., (Achek), are Pennsylvania corporations located respectively in Philadelphia and Gulph Mills. Plaintiff Michael S. Williams is president of MSWPA; Defendant Dan M. Achek (“Dan Achek”) is president of Achek.

On March 2, 2005, Achek signed and submitted to MSWPA a “Proposal for

Professional Services” (the “Architectural Services Agreement”). The letterhead bearing the proposal described Achek as an “Architectural, Engineering and Construction Services” company.¹ On the same date, MSWPA executed its signature on the document, and the proposal became a contract. The Architectural Services Agreement stated that Achek, for a lump sum fee of \$7,500, would provide architectural and engineering services for Mr. William’s a new restaurant located at 1823 Samson Street, Philadelphia. MSWPA paid, and Achek received, the \$7,500.²

On April 1, 2005, Achek and MSWPA entered into a second contract (the “Bar Construction Agreement”). Under the terms of this contract, Achek agreed to provide “all necessary material, labor, equipment, [and] tools,” including “Architectural Contract Drawings” for the construction of a new bar located at the same address as the restaurant.³ Under this contract, MSWPA agreed to pay \$42,850. Of this amount, MSWPA paid, and Achek received, a progress payment of \$22,000.⁴

According to the Complaint, MSWPA learned that Achek is neither licensed nor authorized to practice architectural work in Pennsylvania. The Complaint avers that Achek supplied defective architectural drawings, and alleges that MSWPA incurred additional expenses to remedy Achek’s errors. The Complaint seeks rescission of the two agreements (counts I and II), and equitable relief for unjust enrichment (Count III). The Complaint also seeks damages for breach of contracts (counts IV and V), professional negligence (count VI), breach of fiduciary duty (count VII), fraud (count VIII), and tortious interference with contractual relations (Count IX). The Counterclaim seeks

¹ Exhibit A to MSWPA’s motion for summary judgment on counts I-V of the Complaint.

² Complaint, ¶ 5; Achek’s answer, new matter, and Counterclaim, ¶ 5.

³ Exhibit B to MSWPA’s motion for summary judgment on counts I-V of the Complaint, “Scope of Contract” at 4.

⁴ Complaint, ¶ 28; Achek’s answer, new matter, and counterclaim, ¶ 28.

judgment for breach of contract (First Counterclaim), for equitable remedy against unjust enrichment (Second Counterclaim), and for tortious interference with contractual relations (Third Counterclaim).

DISCUSSION

“Summary judgment is properly granted when 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 . . . which in a jury trial would require the issues to be submitted to a jury.”⁵

“Under the Rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law.”⁶ The evidentiary record comprises any pleadings, answers to interrogatories, depositions, affidavits, and admissions.⁷ The court shall enter summary judgment only when there is no genuine issue of any material fact.⁸

I. The Architectural Services Agreement and the Bar Construction Agreement are illegal and void.

MSWPA moves to rescind the Architectural Services Agreement and the Bar Construction Agreement. MWPA argues that when the two contracts were formed, Achek did not comply with the provisions of 63 PA. § 34.13(h).

“A . . . corporation . . . engaged in the practice of architecture having fewer than three partners, governors, shareholders, directors, members or managers . . . shall have at least one [such individual] who is . . . duly certified to practice architecture in the

⁵ Scalice v. Pa. Emples. Benefit Trust Fund, 584 Pa. 161; 883 A.2d 429, 435 (2005) (quoting PA. R.C.P. 1035.2(1)).

⁶ Id. (quoting PA. R.C.P. 1035.2(2)).

⁷ Id.

⁸ Scalice v. Pa. Emples. Benefit Trust Fund, 883 A.2d at 171.

Commonwealth”⁹ Only architectural firms that comply with 63 PA. § 34.13 may offer architectural services to the public.¹⁰ A contract for architectural services provided by one who is not a registered architect is illegal and void.¹¹

In Lipman v. Cortazzo, Aron Lipman agreed to provide architectural services to his clients, Mr. and Mrs. Cortazzo. When a dispute arose between the parties, Lipman attempted to enforce an arbitration provision in the contract. The Cortazzos objected, sued Mr. Lipman, and alleged that the contract was unlawful, unenforceable, and void, because Mr. Lipman, though lacking an architectural license, had entered into an agreement for architectural services in violation of the statute.¹² Agreeing with the Cortazzos, the court held that an architectural contract in violation of the statute is illegal and void. The court explained that since the statute was “intended to proscribe the practice of architecture by unlicensed, unregistered practitioners,” any contracts providing architectural services by unlicensed, unregistered practitioners could not be enforced.

In this case, the Architectural Services Agreement recites that Achek “will prepare the schematic design drawings ... for the architectural and other building engineering disciplines.”¹³ The same contract also recites that Achek “will proceed in the preparation of the Contract Documents that will consist of the construction drawings and specifications for the architectural and ... engineering disciplines.”¹⁴ The Bar Construction Agreement recites that Achek’s work will include the “Architectural

⁹ 63 PA. § 34.13(h) (2007).

¹⁰ Consulting Engineers Council of Pa. v. The State Architects Licensure Bd., 522 Pa. 204; 560 A.2d 1375, 1378 (1989).

¹¹ Lipman v. Cortazzo, 19 Pa. D. & C.3d 287, 291 (1980).

¹² Id. at 290.

¹³ Proposal for Professional Services, Phases 2-4, attached as Exhibit A to MSWPA’s motion for summary judgment on counts I-V of the Complaint.

¹⁴ Id.

Contract Drawings ... [and] Specifications ... As Described on the Drawings.”¹⁵

In opposition to MSWPA’s motion for summary judgment, Achek argues that the two agreements called not for architectural services, but for “generic construction design and lay out work.”¹⁶ At this stage of the action, Achek has failed to produce evidence of facts essential to this defense. The Architectural Services Agreement and the Bar Construction Agreement are illegal and void, and counts I and II of the Complaint are dismissed.

II. Counts IV, V, VI and VII of the Complaint, and the First Counterclaim, are dismissed.

Counts IV, V, VI and VII of the Complaint, and the First Counterclaim, assert the parties’ respective rights and obligations under the rescinded contracts. Such rights and obligations are dissolved because rescission abrogates all the parties’ rights and responsibilities.¹⁷

A. Breach of the Architectural Services Agreement and Bar Construction Agreement (counts IV and V of the Complaint and Count I of the Counterclaim).

MSWPA alleges that Achek breached the Architectural Services Agreement and the Bar Construction Agreement. By counterclaim, Achek alleges that MSWPA breached the Bar Construction Agreement. To succeed in an action for breach of contract, a party must establish “(1) the existence of a contract, including its essential

¹⁵ Contract Agreement Between Owner And Contractor at 4, attached as Exhibit B to MSWPA’s motion for summary judgment on counts I-V of the Complaint.

¹⁶ Achek’s memorandum of law in opposition to MSWPA’s motion for partial summary judgment, p. 3.

¹⁷ Powell v. Walker, 428 Pa. Super. 31; 630 A.2d 16, 20 (1993).

terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.”¹⁸

Because the Achek-MSWPA agreements are illegal and void, neither party may prove the elements necessary to succeed in a breach of contract claim. Counts IV and V of the Complaint, and the First Counterclaim, are dismissed.

B. Negligence - professional liability (count VI of the Complaint).

MSWPA alleges that Achek was negligent in performing and rendering the professional architectural services described in the contracts.¹⁹ “An architect is bound to perform with reasonable care the duties for which he contracts.”²⁰ By his contract, an Architect implies that he possesses the ordinary skills and abilities of his profession, and that he will exercise them.²¹ In this case, Achek was not a certified architect; therefore, Achek cannot be held to the standards of that profession. Count VI of the Complaint is dismissed.

C. Breach of fiduciary duty (count VII of the Complaint).

Achek moves to dismiss count VII on grounds that Pennsylvania does not recognize the existence of a fiduciary duty between architect and client.²² A fiduciary duty arises when the relationship between the parties rests upon an “overmastering influence” on one side, or “weakness, dependence, or trust, justifiably reposed,” on the other.²³ A fiduciary relationship does not arise just because one party enjoys greater skill and expertise than another in a particular field.²⁴ To allow otherwise, a fiduciary duty

¹⁸ Reformed Church of the Ascension v. Hooven & Sons, Inc., 2000 Pa. Super. 406; 764 A.2d 1106, 1109 (2000).

¹⁹ Complaint, ¶ 71.

²⁰ Cedarbrook Country Club v. Carroll, 4 Phila. 208, 213-214 (Pa. C.P. 1980) (affirmed, 299 Pa. Super. 559; 445 A.2d 207 (1982)).

²¹ Id.

²² Achek’s memorandum of law in support of its motion for partial summary judgment, p. 5.

²³ Etoll, Inc. v. Elias/Savion Adver., 2002 Pa. Super. 347; 811 A.2d 10, 23 (2002).

²⁴ Id.

would arise whenever one party enjoys marginally greater skills and expertise than the other.²⁵ MSWPA has failed to show weakness, dependence, or trust justifiably reposed in Achek, or that Achek exerted overmastering influence over MSWPA. For this reason, the claim of breach of fiduciary duty may not stand.

Even accepting *arguendo* that an architectural firm owes a fiduciary duty to its client, MSWPA's claim may not stand because Achek is not an architectural firm. Stated in syllogistic form, the issue is resolved as follows:

Major Premise:	The architect-client relationship is based upon a fiduciary duty owed by the architect.
Minor Premise:	The Achek-MSWPA relationship is not an architect-client relationship.
Conclusion:	The Achek-MSWPA relationship is not based upon a fiduciary duty owed by the architect.

The claim based on breach of Fiduciary duty is dismissed.

The court will issue an Order contemporaneously with this Opinion.

BY THE COURT

HOWLAND W. ABRAMSON, J.

²⁵ Id.