

Amended Joinder Complaint filed against Kline & Specter, P.C. and Maria Laura Fabiola Santos
Fonseca is hereby dismissed.

BY THE COURT:


ALBERT JOHN SNITE, JR., J.

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

ZAJAC & ARIAS, LLC and	:	
ERIC G. ZAJAC,	:	
	:	DECEMBER TERM, 2011
Plaintiffs,	:	No. 03213
	:	
v.	:	
	:	
LEONARD J. RIVERA and	:	
MACELREE HARVEY, LTD.,	:	
	:	
Defendants,	:	Control No. 12072428
	:	
v.	:	
	:	
WEINSTEIN SCHLEIFER and	:	
KUPERSMITH, P.C.	:	
and	:	
KLINE & SPECTER, P.C.	:	
and	:	
MARIA LAURA FABIOLA SANTOS	:	
FONSECA,	:	
	:	
Additional Defendants	:	

MEMORANDUM OPINION

By: Honorable Albert John Snite, Jr.

PROCEDURAL HISTORY

Before the court are the Preliminary Objections to the Amended Joinder Complaint of Leonard Rivera, Esq. and MacElree Harvey, Ltd. against Additional Defendants Kline & Specter, P.C. and Maria Laura Fabiola Santos Fonseca, filed on July 19, 2012.

Defendants Leonard Rivera and MacElree Harvey, Ltd. filed Defendants' Response to the preliminary objections on July 31, 2012.

Kline & Specter and Fonseca filed a Reply on August 8, 2012.

FACTUAL HISTORY

This case concerns a dispute over referral fees associated with a personal injury case. Specifically, these Preliminary Objections stem from the fees related to the personal injury claims of Additional Defendant Maria Laura Fabiola Santos Fonseca (“Ms. Fonseca”) against various parties arising from the death of her husband, Daniel Lopez Ortiz (“Mr. Ortiz”), in a motor vehicle accident that occurred on April 13, 2009.

In April 2009, Weinstein, Schleifer & Kupersmith, P.C. (“Weinstein Schleifer”) and Eric G. Zajac of Zajac & Arias, LLC (“Zajac & Arias”) were engaged as counsel to the Estate of Mr. Ortiz, and eventually commenced suit.¹ The original action was brought in the Court of Common Pleas of Philadelphia County, Pennsylvania under docket number 090502915 on May 20, 2009.

In April 2010, Ms. Fonseca discharged Weinstein Schleifer and Zajac & Arias. Shortly thereafter, Defendant Leonard Rivera (“Mr. Rivera”) of MacElree Harvey, Ltd. (“MacElree Harvey”) referred Ms. Fonseca to Additional Defendant Kline & Specter, P.C. (“Kline & Specter”).

Ms. Fonseca entered into a contingent fee agreement with Kline & Specter with the assistance of Mr. Rivera and MacElree Harvey, providing for an attorney’s fee of forty percent (40%) of the net recovery. Kline & Specter and MacElree Harvey then entered into a written agreement via email which stated that Kline & Specter would retain not less than sixty percent (60%) of the contingent fee, and MacElree Harvey would receive up to forty (40%) of the contingent fee, subject to any possible claim made by Weinstein Schleifer and Zajac & Arias.

In December 2010, Weinstein Schleifer filed suit against Mr. Rivera and MacElree Harvey seeking to recover fees associated with Ms. Fonseca’s case. In July 2011, a Praecipe to Discontinue action was filed.

The case at bar was filed by complaint on December 27, 2011 by Plaintiff Zajac & Arias against Defendants Rivera and MacElree Harvey, again seeking a referral fee.

In May 2012, Defendants Rivera and MacElree Harvey joined Additional Defendants Fonseca and Kline & Specter. An amended joinder complaint was filed on July 2, 2012. The

¹ I am assuming that the original fee agreement did not include a provision for compensation in the event that the firm was discharged.

joinder complaint alleged that Additional Defendants were responsible for the fees and/or indemnification. These Preliminary Objections followed.

DISCUSSION

I am sustaining the current Preliminary Objections, concluding that Additional Defendants in the instant action were improperly joined, as there could not be a finding of liability against either Ms. Fonseca or Kline & Specter.

The underlying claim filed by Plaintiffs Zajac & Arias against Defendants Rivera and MacElree Harvey is composed of two arguments: (i) intentional interference with contractual relationship, and (ii) unjust enrichment and quantum meruit. According to the Complaint, Plaintiffs believe that Defendants sought out Ms. Fonseca with the knowledge that she was already represented by Weinstein Schleifer and/or by Zajac & Arias, and met with her in order to solicit her as a client and persuade her to discharge Weinstein Scheifer.² Plaintiffs base this belief on the lack of prior complaints expressed by Ms. Fonseca and her refusal to directly communicate with Weinstein Schliefer or Zajac & Arias following her contact with MacElree Harvey. This is, essentially, a tort-based claim for interfering with the contractual expectation of Zajac & Arias, with MacElree Harvey being the tortfeasor.

As Additional Defendants point out, joinder of additional defendants is permitted if the party joined may be solely liable on the underlying cause of action against the joining party, or may be liable to or with the joining party on any cause of action arising out of the transaction upon which the underlying cause of action is based. There have been no facts averred to support a finding of liability against Additional Defendants Kline & Specter or Ms. Fonseca.

There is no cause of action here against Kline & Specter, as MacElree Harvey and Kline & Specter's agreement defines any respective liability. The agreement between MacElree Harvey and Kline & Specter, regarding the 60/40 split of the net collective recovery of Ms. Fonseca's contingent fee, limits any payment out of Kline & Specter's portion. It was requested by Kline & Specter that the 40% attorney's fee in the underlying claim was to be held in escrow until the current dispute is resolved. It was, in fact, ordered by the Orphan's Court on June 15, 2012 that this disputed attorneys' fee be kept in Kline & Specter, P.C.'s escrow account pending resolution of this dispute.³

² See Complaint ¶ 22 (attached to Preliminary Objections as exhibit E).

³ See Order Approving Allocation and Distribution of Settlement Proceeds, Control No. 12042851

There is, further, no alleged claim by Plaintiffs against Ms. Fonseca.⁴ Plaintiff is suing for tortious interference and is seeking damages that include its “share” of the original 40% contingent fee. Plaintiff is also seeking a quantum meruit recovery from MacElree Harvey. As plead, it is not a quantum meruit claim against the former client, Ms. Fonseca.

A quantum meruit recovery by Plaintiff firm Zajac & Arias against Defendant firm MacElree Harvey would potentially be payable out of *defendant's portion* of the contingent fee.⁵ Again, Kline & Specter's (60%) agreement with MacElree Harvey (40%) limits this recovery, and the 40% set-aside is now court-ordered.

Lastly, MacElree Harvey and Kline & Specter have, per their agreement, agreed to indemnify Ms. Fonseca for any fees and expenses owed to Weinstein Schliefer,⁶ thus further negating any liability directly from Ms. Fonseca on a potential quantum meruit claim as the former client.

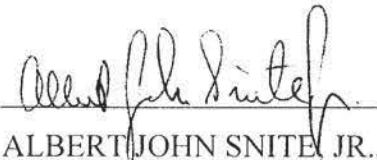
Plaintiffs therefore have no actual dispute or claim against either Ms. Fonseca or Kline & Specter, and neither do defendants.

CONCLUSION

In conclusion, I am of the opinion that Additional Defendants Fonseca and Kline & Specter's Preliminary Objections to Amended Joinder Complaint Against Additional Defendants will be sustained, and the Amended Joinder Complaint filed against Kline & Specter, P.C. and Maria Laura Fabiola Santos Fonseca is dismissed, as there is no actual dispute that involves either Additional Defendant.

BY THE COURT:

DATE: September 24, 2012


ALBERT JOHN SNITE, JR., J.

⁴ Although some language in Count II of the Complaint appears to be asking for quantum meruit, a claim for quantum meruit is more properly a claim by the discharged attorney against the client. To the extent that MacElree Harvey and/or Kline & Specter have agreed to “indemnify” the client with respect to any quantum meruit claim against Ms. Fonseca (and, again, it is noted that no such claim has been made by the discharged attorney), the court ordered escrow of the 40% of the fee pending resolution of this case and is the maximum liability under any theory of recovery.

⁵ I am not currently making predictions on damages, whether quantum meruit would be available damages if the tort is proven at trial.

⁶ See Defendant's Answer to Amended Complaint ¶52.